

S. M. DAS GUPTA'S

INDIAN INCOME-TAX ACT

SECOND EDITION, 1934.

THE
INDIAN INCOME-TAX ACT
ACT XI OF 1922

With all Subsequent Amendments

(Its Law, Practice & Procedure)

Checked
1987

BY

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SECOND EDITION

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TO
MY FATHER
BABOO SIVENDRA CHANDRA DAS GUPTA
PLEADER, KHULNA
THIS BOOK
IS MOST RESPECTFULLY
DEDICATED
BY HIS AFFECTIONATE
SON

,

FOREWORD

Home Department,
Simla,
9-7-31.

I had occasion some years ago to compliment the author on the ability of his pleadings before me in Income-tax appeals, and advised him to concentrate on this branch of law. He has written what seems to be an excellent book in every way, which should prove invaluable to assesseees, lawyers and assessors. His treatment of sections 10, 22 and 23 is particularly admirable.

(*Sd.*) D. GLADDING.

PREFACE TO THE SECOND EDITION

The recent introduction of several drastic amendments, *e.g.*, assessment of the income of a deceased person by treating his legal representative as the assessee, depreciation allowance for capital assets in connection with income from profession or vocation, immediate assessment of persons leaving British India, appeals against refusal to register a firm or to grant a refund claimed *etc.* and the numerous additions and alterations in the existing sections of the Act, have necessitated the publication of a second edition.

The present edition has been thoroughly revised, recast and brought up-to-date with copious illustrations, replete with recent English and Indian decisions.

I am indebted to Babu Atul Mohan Das Gupta, M.A., B.L., Pleader for his valuable suggestions.

I am grateful to Babu Karuna Mohan Das Gupta, B.A., Editor, Income-tax Law Reports, for the preparation of the alphabetical list and Index of Cases.

My sincerest thanks to those who rendered me assistance by their kind criticisms and suggestions which have been fully utilised in this new edition.

Thanks are also due to the enterprising publishers for bringing out this edition so speedily.

BAR LIBRARY, KHULNA, }
Dated the 24th July, 1934. } SUDHIR MOHON DAS GUPTA.

PREFACE TO THE FIRST EDITION

The publication of a critical and annotated edition of the Indian Income-tax Act, soon after the passing of the Supplementary Finance Act, 1931, appears to be most opportune. The times are stirring. The extreme financial difficulties of the Government have led them to take the extraordinary steps of introducing a fresh bill in the middle of the financial year and of enacting the same by certification, thus widening and deepening the bases of income-tax to an enormous extent.

As a result of that, a very large number of persons with very modest income, barely sufficient for mere living, have suddenly been brought under the operations of the Act.

The assessee, who were confident that the Finance Act, passed almost under similar circumstances earlier in the year, had reached the high watermark of direct imposition so far as income-tax was concerned, are faced with further demands in the shape of surcharge. Though on theoretical grounds all reasonable men admit that income-tax is the most equitable form of taxation, the sentiment against it is there all the same; its demand is often so difficult to bear.

There is the clamour in certain quarters that clever people are hoodwinking the Government and are evading the proper burden of taxation; on the other hand, some assessee labour under the grievance that the Act is often administered as if it were an instrument and not a guide.

The Act has its own intricacies and lawyers specialising in the Act are few. The need for constantly referring to the touch-stone of the letter of law and of understanding the spirit and implications of the law seem to be widely felt, and the present work, including as it does the most recent rules and rulings, is placed before the public in the hope that it may partially satisfy that need.

I have endeavoured to arrange the notes in such a way as to make them useful to the Bench and the Bar in particular and to the assessee in general.

Attempts have been made to make the book as practical as possible by introducing a miscellaneous chapter with copious illustrations.

I am grateful to Babu Atul Mohon Das Gupta, M.A., B.L., for his able and kind suggestions.

My thanks are due to Babus Pratul Mohan Das Gupta, B.Sc., and Karuna Mohon Das Gupta, B.A., for the alphabetical list of cases cited.

Thanks are due to the enterprising publishers who have brought out this edition so speedily and who have done everything to give the book a decent get-up.

BAR LIBRARY, KHULNA, }
Dated 25th January 1932. }

S. M. DASGUPTA.

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OUTLINE OF THE ACT

The Indian Income-tax Act XI of 1922 together with its amendments prescribes only the administrative machinery and the procedure and depends for its operation on the Annual Finance Act that fixes the graduated rates of tax for the year.

Income-tax Officers are assessing authorities, the jurisdiction of each officer being either a well-defined area or a particular class of persons or income. Assistant Commissioners are appellate authorities and Commissioner of Income-tax is the provincial head for the administration of the Act.

Persons affected by the Act are the assessees, that is, persons by whom income-tax is payable. The Act classifies such persons into several classes viz.

Individual;

Hindu undivided family :

Company ;

Firm ;

Association of individuals.

The terms "Hindu undivided family" and "Association of individuals" have not been defined. The use of the word "undivided" in the former term obviously signified several members still remaining together though capable of being divided but have not yet chosen to do so. In the latter term the ideas of a common object and a common endeavour are implied. "Company" means not only the company as defined in the Indian Companies Act but includes other corporate bodies as defined in section 2(6). Firms are of two kinds, registered and unregistered. This distinction is only for the purpose of Income-tax Act, the former being one which has been registered with the Income-tax Officer in accordance with the provisions of the Act and the latter includes all other firms. The principal officer of a company or association and manager of a firm or a Hindu undivided family are their respective representatives. Agent of a non-resident, guardian of a minor or trustee of a lunatic or idiot and any legally appointed manager to act on behalf of others are treated as assessees in their representative capacities. All companies and registered firms are assessees whereas the others are so only so long as the Income-tax Officer holds them as such. If for any reason an assessee is not required to or does not pay tax he does not thereby cease to be an assessee.

The tax is payable on account of income, profits or gains, accruing or arising or received in British India or deemed under the provisions of the Act to accrue or arise or to be received in British India. Thus, not only the cash income actually received is taxable but also the constructive profits or gains which, though not actually received, originates or arises or is found to be due to or becomes receivable by an assessee. Whether the wider meaning is to be applied or not depends on the method of accounting adopted by the assessee.

The following are the instances where income is deemed to accrue or arise or to be received :—

- (a) Profits or gains of business accruing or arising without British India but received in, or brought there within three years.
- (b) Salaries of employees of Government and local authorities in India but outside British India.
- (c) Professional fees received in India but outside British India by persons ordinarily resident in British India.
- (d) Profits or income to non-residents, from property or business connection in British India.

For convenience all incomes have been grouped under six different heads and any income treated as taxable must come under one and not more than one of these heads.

(1) Salary. The conception behind the word is the remuneration for services rendered to an employer, public or private, and includes value of rent-free quarters provided by the employer.

(2) Interest on Government securities and on debentures issued by companies and local authorities come under a separate head, whereas income from other investments such as debenture issued by firms, associations, clubs or individuals, as well as company shares, loans, bank deposit, etc., are to be treated as income from other sources.

(3) The ownership of property, meaning thereby "buildings or lands appurtenant thereto" has been made taxable, in accordance with the wide scope of the word income as explained above. The term "property" includes not only any house let out to tenants for rent but also any dwelling house and any house reserved for personal use and yielding no income, the taxable income in all cases being calculated in terms of the *bonafide* annual rental value. Only in the case of dwelling house the value is limited to 10 per cent. of total income. Any house occupied for the purpose of assessee's own business is exempt.

(4) Business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. The definition has been widened by the latter part in order to include all attempts, whether of long or short duration, made with the definite object of making profit. The profit is calculated by taking the gross receipts and deducting therefrom all expenditure solely incurred for earning the gross receipts. Expenses and losses not incurred in the course of regular business for that year are thus excluded, viz., capital expenditure, losses in speculation, gifts and presents, commissions of irregular nature and charities. The appropriation of profit is thus inadmissible, viz., interest on proprietor's or partner's capital, salary to partners, household expenses, drawings for personal use, amounts transferred to reserves and funds, bad debts and discounts not written off, bonus not subject to employment contract, income-tax and super-tax. Details of admissible expenditure are given in section 10.

(5) The income from profession or vocation is derived from the exercise of any knowledge or ability acquired through special training and sought by the public from time to time.

(6) Any income not coming under the above heads and not exempted from tax by general provision or special rules should come under the last head.

The chief exemptions are :—

- (i) Agricultural income ;
- (ii) income of charitable and religious trusts and institutions ;
- (iii) income of local authorities ;
- (iv) capital sums received on account of commuted pensions, insurance policies and accumulations in provident funds.
- (v) Allowances given to meet expenditure incurred solely in the performance of duties.
- (vi) casual or non-recurring receipts not coming under income from business or profession ;
- (vii) exemptions notified by Governor-General-in-Council in exercise of section 60.

The assessment for any financial year is made on the income of the previous year, as that income is likely to be exactly known. But what the previous year should be is left to the choice and practice of the assessee. The standard is the preceding financial year, but any year that ends during that

year may be chosen. The Act also provides for the recognition as previous year any year that ends on a date some days later than the preceding financial year. Until a business completes its first accounting year and that accounting year has become a previous year with respect to a financial year, the question of its assessment does not arise at all.

The assessment is made on the basis of return of income if any submitted by the assessee ; companies are required to do so by 15th June (or by any extended date allowed by the Income-tax Officer) and all other assessee only when called upon to do so. Assessment is made either by accepting the return if found correct and complete ; otherwise, only after the assessee has been required to produce evidence in support. If, without sufficient reason, the return is not submitted or evidences in support of the return are not produced, the assessment is finished on the best judgment of the Income-tax Officer.

The assessment consists in the determination of total income and the tax payable. In the total income the gross values of salaries, interest on securities and dividends will have to be taken. By special provisions the income derived as member of Hindu undivided family is not included in the total income of that member. In calculating the tax payable the following deductions from total income are admissible :—

(a) Contribution to provident funds and premiums for life insurance, limited up to $\frac{1}{4}$ th of the total income.

(b) Incomes declared to be tax-free, *e.g.*, interest on tax-free securities.

(c) Incomes already taxed.

The total income determines the rate and the rates for different total incomes are prescribed in the Finance Act for the assessment year.

Credit is given for the tax or excess tax already deducted from the salary or interest on securities paid to the assessee during the previous year. Credit is also given for the excess tax, if any, paid on his behalf by the company wherein he is a shareholder, or the registered firm whereof he is a partner. A demand notice is then issued requiring payment of the balance of tax still due.

If from any person excess tax has been deducted than what he is liable to pay on the basis of an assessment he may claim a refund of the same.

The tax demanded should be paid by due date, otherwise penalty may be imposed and recovery effected either as an

arrear of land revenue or as arrears of municipal tax or local rate. If the assessee be a salaried employee, the employer may be directed to recover the arrears.

Against the best judgment assessments no appeal lies but they may be reconsidered by the Income-tax Officer if sufficient grounds for non-compliance are shown. Appeal against refusal to reconsider and against other assessments may be preferred before the Assistant Commissioner within one month of refusal or assessment. Besides some limited appellate powers the Commissioner possesses wide powers of reviewing any order passed by any subordinate authority, with a view to bringing it in conformity to law. In cases where the right of appeal has been exercised the assessee may require the Commissioner to refer any question of law arising out of the appellate order to the High Court. If the Commissioner refuses, the assessee may move the High Court direct, praying for a reference by the Commissioner. The Commissioner may also refer to the High Court of his own motion any question of law in connection with the Act. From the decision of the High Court an appeal lies to the Privy Council, if the High Court certifies that the case is a fit one for appeal.

Notices or requisitions under the Act can be served by registered post or as a summons under the Civil Procedure Code. Appearance before the Income-tax authorities may be either personal or by means of representatives.

There are provisions, among others, for dealing with the following special cases and circumstances :—

- (i) where an income escapes assessment in the proper year ;
- (ii) rectification of apparent mistakes ;
- (iii) taxation of business or vocation going to be closed ;
- (iv) succession of business ;
- (v) assessment of tramp ships ;
- (vi) incomes doubly taxed ;
- (vii) offences under the Act.

The recent amendments of the Act have affected its provisions in important particulars of which the following may be mentioned :—

- (a) Assessment of the income of deceased person, by treating his legal representatives as the assessee in respect of complying with the notices or of paying the demand.

- (b) The interest payable on capital borrowed for acquiring property is exempt, even though the property is not specifically charged for it.
- (c) Depreciation allowance for capital assets in connection with income from profession or vocation.
- (d) Deduction of income-tax and super-tax at source on any interest above prescribed limit.
- (e) Immediate assessment of persons leaving British India.
- (f) Appeals against refusal to register a firm or to grant a refund claimed.

Attention may also be drawn to the following extraordinary provisions :—

- (a) If a person, required by the Act to deduct tax at source, does not do so, he shall be deemed to be an assessee in default.
 - (b) The “total income” of a non-resident, applying for refund, shall include all income, profits and gains wherever arising, accruing or received.
 - (c) Any person not resident in British India, who is neither a British subject nor a subject of a State in India, is not entitled to any refund under section 48.
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CHAPTER X.

MISCELLANEOUS.

SECTIONS.

- 59. Power to make rules
 - 60. Power to make exemptions, etc.
 - 61. Appearance by authorised representative
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 - 64. Place of assessment
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and appeal to lie in certain cases to Privy
Council
 - 67. Bar of suits in Civil Court
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THE INDIAN INCOME-TAX ACT.

ACT No. XI of 1922.

As subsequently amended.

**An Act to consolidate and amend the law relating
to Income-tax and Super-tax.**

WHEREAS it is expedient to consolidate and amend the law relating to Income-tax and Super-tax ; It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Income-
Short title, extent and commencement. tax Act, 1922.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also, within the dominions of Princes and Chiefs in India in alliance with His Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor-General in Council in that behalf, and to all other servants of His Majesty in those dominions.

(3) It shall come into force on the first day of April, 1922.

Extent of the Act.—This sub-section governs the whole of the Act and defines the areas to which the Act applies. Section 7 (2) on the other hand governs merely the taxation of particular classes of income.

The words “and to all other servants of His Majesty in those dominions” were added in the Act of 1918 as it was considered advisable to abandon the previous limitation, in the case of persons serving outside British India, of liability to

British subjects, since it not infrequently happens that subjects of Indian States are taken into Government employment and sent to serve in places outside British India.

The words "including British Baluchistan" were inserted in the Act of 1922. Prior to the passing of that Act, the Income-tax Act was applied to British Baluchistan by notification in a restricted form, income-tax being, under the notification, leviable only upon salaries received by persons in the service of, and paid by or on behalf of, Government or of a local authority established in the exercise of the powers of the Governor-General in Council. The Act now applies in full force to the whole of British Baluchistan.

The whole of the Act, with the exception of sections 7(2) and 64, has been applied to the Civil and Military Station, Bangalore, and the District of Abu, while to Berar the whole Act except section 7(2) has been applied. Only so much of the Act has been applied to the Cantonment of Baroda, the British administered areas in Central India and the British administered areas (excluding Railway lands) in the Bombay Presidency, as relates to the assessment and collection of income-tax on salaries of Government servants or of local authorities established in the exercise of the powers of the Governor-General in Council.

The Civil and Military Station of Bangalore, Berar and the District of Abu are distinct from British India and strictly speaking, all profits accruing or arising or received in British India or deemed to accrue or arise or to be received in British India are liable to tax even if they have already been taxed in those areas. Similarly, all profits accruing or arising or received in any of those areas or deemed to accrue or arise or to be received in those areas are liable to tax even if they have already been taxed in British India. Berar is practically treated as part of British India for purposes of assessment and no question of double taxation arises. When the same profits are taxed both in British India and in the Civil and Military Station of Bangalore, a deduction or refund is given in British India equal to the tax levied on such profits in the Civil and Military Station if the headquarters of the firm or company etc., are in British India, and a similar refund or deduction is given at Bangalore if the headquarters of the firm or company are at Bangalore. The whole of the Act has also been applied to Angul, but under a notification issued under section 60 of the Act, the income of persons in that District other than persons in the service of Government has been exempted from liability to the tax, *see* paragraph 17(35).

Under the sub-section—

(a) the Act applies in Indian States to all persons in the

service of Government, whatever their nationality. It applies in Indian States to persons in the service of a local authority established in the exercise of the powers of the Governor-General in council, only if they are British subjects, or servants of Government lent to the local authority ;

(b) the salaries of Government officers serving outside India are not liable to income-tax unless they are drawn or otherwise received in India.

(c) Frontier Agency tracts and ceded areas are included in the term "dominions of Princes and Chiefs in India in alliance with His Majesty" (G. I. No. 791-F, dated the 26th March 1918).

APPLICABILITY.

"The principle of all fiscal legislation is that if the person sought to be taxed comes within the letter of the law, he must be taxed however great the hardship may appear to our judicial mind to be. On the other hand if the Crown seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law, the case might otherwise appear to be": *In the matter of Ramanandan Chetty*, 43 Mad. 75 distinguished, but "if the Crown seeking to recover tax cannot bring the subject within the letter of the law, the subject is free. But the court cannot undertake, out of its own notions of what is fair, to adapt or rearrange the machinery of the Act upon a matter of such character and importance as maintenance allowance": *In the matter of Bijay Singh Dhuthuria*, 57 Cal. 918 : A. I. R. 1930 Cal. 641 (F. B.). It is a well recognised rule that in a Statute imposing pecuniary burdens, if there be a reasonable doubt with regard to the construction of any burdensome provision, the construction most beneficial to the subject is to be adopted—*Stockton and Darlington Ry v. Burrell*, 8 Scott N. R. 641 ; *In re Mickle Thwait* (1885) 11 Ex. 452 ; *In re Thorley* (1891) 2 Ch. 613 relied on—in *the matter of Sindh Light Railway*, A.I.R. 1932 (S.) 192.

EQUITABLE CONSTRUCTION.

"The scope of the Income-tax Act cannot be extended by analogy nor can a beneficent or equitable construction be placed upon it in order to prevent a real or supposed anomaly because such a construction is not admissible in a taxing Act. Hence if the Crown cannot bring the subject within the letter of the Statute, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be :"
In the matter of Bhagat Jan Das v. Income-tax Commissioner, Lahore, 117 I.C. 657 : A.I.R. 1929 Lahore, 609. This Act must be read and interpreted according to its natural constructions.

as laid down in the case of *Raja Prabhat Chandra Barua*, 31 C.W.N. 765 : A.I.R. 1929 Cal. 432 : 102 I.C. 845 : 54 Cal. 863 : 45 C.L.J. 323. For details see *Mis. chapter*.

INCOME.

The Act deals with the taxation of income under several heads. So far as properties are concerned "Notional Income" is taken while in other cases it means actual income as is reported in the case of *Rajendra v. Commissioner of Income-tax*, 118 I.C. 593 : A.I.R. 1929 Patna, 449.

LIABILITY TO TAXATION.

The liability to taxation arises on the place where income is received or is accrued : *In the matter of Bhagat Jain Das*, I.C. 117 I57 : A. I. R. 1929 Lahore, 609. All that the law requires is that an assessee is entitled as of right to circumvent in any legal manner the incident of a taxing statute, it is not proper for the authorities to "take motive of the assessee : " *In the matter of Ebrahim Saha & Co.*, 110 I.C. 207 : A.I.R. 1928 Mad. 543. Similarly an assessee is justified to take recourse to any device lawfully to avoid tax : *In re Gangasagar*, 120 I.C. 435 : A.I.R. 1929 All. 919 ; *Makunda Sarup*, 107 I.C. 683 relied on and in the case of *Rajni Prasad Singha*, 123 I.C. 617 : A.I.R. 930 Pat. 33, the same principle was observed. If any of his Majesty's subjects are clever enough to avoid taxation by legal means, they are at liberty to do so, and there is nothing wrong in so conducting one's affairs within the law as not to attract taxation—*In re Bai Sakina Boo*, A.I.R. 1932 B. 116. The mere fact that the transaction is a device to escape income tax ought not to prejudice the assessee.

VALIDITY OF ASSESSMENT.

Where assessment has been arrived at for a year in which source of income, which existed in previous year, does not exist in the assessment year, it is not bad in law ; the income-tax is a single tax and not an aggregate of different taxes : *In the matter of Behari Lal Mallick*, 31 C.W.N. 557 : A.I.R. 1927 Cal. 553.

2. In this Act, unless there is anything repugnant
Definitions. in the subject or context,—

(1) "agricultural income" means—

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in British

India or subject to a local rate assessed and collected by officers of Government as such ;

(b) any income derived from such land by—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii) ;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (ii) and (iii) of clause (b) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling-house, or as a store-house, or other out-building ;

(2) “assessee” means a person by whom Income-tax is payable ;

(3) “Assistant Commissioner” means a person appointed to be an Assistant Commissioner of Income-tax under section 5 ;

(4) “business” includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture ;

(4A) “The Central Board of Revenue” means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 ;

(5) “Commissioner” means a person appointed to be a Commissioner of Income-tax under section 5 ;

(6) “Company” means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession, and includes any foreign association carrying on business in British India whether incorporated or not, and whether its principal place of business is situate in British India or not, which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act ;

(6A) “Firm”, “partner” and “partnership” have the same meanings respectively as in the Indian Contract Act, 1872 ; and

(7) “Income-tax Officer” means a person appointed to be an Income-tax Officer under section 5 ;

(8) “Magistrate” means a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Local Government to try offences against this Act ;

(9) “Person” includes a Hindu undivided family ;

(10) “Prescribed” means prescribed by rules made under this Act ;

(11) “Previous year” means—

(a) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made

up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up :

Provided that, if this option has once been exercised by the assessee, it shall not again be exercised so as to vary the meaning of the expression "previous year" as then applicable to such assessee except with the consent of the Income-tax Officer and upon such conditions as he may think fit ; or

(b) in the case of any person, business or company or class of person, business or company, such period as may be determined by the Central Board of Revenue or by such authority as the Board may authorise in this behalf ;

(12) "Principal Officer," used with reference to a local authority or a company or any other public body or any association, means—

(a) the secretary, treasurer, manager or agent of the authority, company, body or association, or

(b) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof ;

(13) "Public servant" has the same meaning as in the Indian Penal Code ;

(14) "Registered firm" means a firm registered under the provisions of section 26A ;

(15) "Total income" means total amount of income, profits and gains from all sources to which this Act applies computed in the manner laid down in section 16 ; and

(16) “Unregistered firm” means a firm which is not a registered firm.

DEFINITION OF AGRICULTURAL INCOME.

Agricultural income is exempted from tax under the provisions of section 4 (3) (viii) of the Act and any income to be exempted must fall within the words of this definition. The definition was amended in the Act of 1922 in order to make it clear that rent or revenue derived from land used for agricultural purposes [clause (a)] is exempt from tax only in cases where the land is assessed to land revenue by an authority in British India or is subject to a local rate assessed and collected by an authority in British India, and that the exemption does not apply to cases where the land pays revenue or local rate to authorities outside British India. Clauses (b) and (c) were also amended at the same time in order to make it clear that the limitations in clause (a) apply also to the incomes specified in clauses (b) and (c) so that income derived from agriculture will only be exempt if the agriculture is in respect of land on which land revenue or local rate is paid to an authority in British India.

A further amendment was also made by the Act of 1922 in clause (b) (iii). Under the previous Acts profits from the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him were included under “Agricultural income” only in cases where the cultivator or receiver of rent-in-kind did not keep a shop or stall for the sale of such produce. Under the present Act profits derived by a cultivator from the sale of the produce raised by him are included in the term “agricultural income” where the produce is sold in its raw state, that is, if no process has been performed in respect of the produce other than a process of the nature described in sub-clause (ii). The tax therefore is now not leviable on the profits derived by a cultivator or receiver of rent-in-kind from the sale of the raw produce raised or received by him even if he keeps a shop for the retail vend of such raw produce.

If a land-owner grows on his own land, which is assessed to land revenue, forests or trees and derives income therefrom, he is not liable to income-tax on such income. Persons, however, who take contracts in forests for the cutting down and selling of timber are liable to tax on the profits from such transactions.

Assignment of land revenue to a Jagirdar is not assessable to income-tax in the hands of the Jagirdar.

Interests on arrears of rent of land used for agricultural

purposes is part of the rent derived from the land and is therefore not liable to income-tax, subject to the exception that if the arrears are secured by a bond and are therefore recoverable by civil suit such interest is taxable.

Rule 23 prescribes the manner in which profits and gains shall be arrived at in the case of incomes derived in part from agriculture and in part from business, and provides for the separation of industrial from agricultural profits in cases where the agricultural raw produce is worked up for the market. Assessing authorities should determine what portion of profits derived in part from industry and in part from agriculture should be regarded as derived from industry and agriculture respectively taking into account the circumstances of each case.

In the case of tea, where the persons growing, manufacturing and selling tea has separate purely agricultural income (*e. g.*, from rent for cultivation of land on which tea is not grown) no account shall be taken of such income in calculating the profits liable to tax. Some concerns again are engaged in the growing of tea seed. Where the tea seed is produced for the use of the assessee, it must, of course, be included in the profits. No tax should, however, be levied on the profits derived from the growing of tea seed in cases where the tea seed is sold to a third party and where separate accounts are maintained for the expenditure and receipts for the growing of the seed. Although under section 10(2)(ix) of the Act the only expenditure that can be allowed to be set against profits is expenditure incurred solely for the purpose of earning the profits or gains taxable in any year, it will only be fair in the case of tea concerns to allow as a charge against profits the whole of the cost of the upkeep (*e. g.*, weeding and draining) of extensions of the estate which are not in bearing. No allowance can be made on account of any capital expenditure in connection with such extensions such as the acquisition, clearing and draining of the land, the making of roads or the erection of buildings before the cultivation begins, but when once the cultivation has begun with the completion of the planting, the annual cost of the upkeep of such extensions should be allowed as a business expense even although the expense is not in bearing.

The following principle should be adopted in calculating the net dividends and regulating refunds on dividends, paid from profits that are only partly taxed in the hands of the company, *e. g.*, companies a part of whose income arises or accrues outside British India and is not received in British India or part of whose income is derived from tax-free securities :—

If x per cent of the profits pay tax in the hands of the company, the total income of the shareholder for the purpose of refunds is x per cent of the net dividend multiplied by $32/29$ taking the present maximum rate of income-tax as 1 anna and 6 pies. That part of the profits of the company which is not taxed in its hands will, of course, be taxable in the hands of the shareholder under section 14(2)(a) if the income is liable to tax under section 4(1) and is not exempt under section 4(3) or under one of the notifications issued under section 60. But no addition on account of income-tax should be made to the part of the dividends and taxed in the hands of the company in computing the shareholder's total income.

CASE LAWS.

Rent or Revenue :—The case of *Birendra Kishore Manikya* reported in 48 Cal. 766 lays down that premiums paid for settlement of waste lands are not liable to tax but premiums paid for recognition of a transfer of holding from one tenant to another is taxable and as such is not agricultural income. On the other hand the case of *Nawab Jado Meher Bano Khanum* reported in 53 Cal. 34 held that Nazar or selami paid by a tenant to landlord for the recognition of a non-transferable holding is rent or revenue within the meaning of sec. 2(1) and it is exempt from assessment to income-tax by virtue of the provision of section 4(3)(viii). This practically over-rules the decision in the case of *Birendra Kishore Manikya*. It was also followed in the case of *the Maharajadhiraj of Darbhanga*, reported in A. I. R. 1928 Pat. 468.

NAZAR.

Punahaya Nazar is not agricultural income ; but mutation fees paid by the tenant to landlord as such on succeeding to the holding by inheritance and are income derived from land used for agricultural purposes and as such are exempt from tax. The fact that the realisation of these fees is illegal is immaterial : *In the matter of Rajendra*, 118 I. C. 593.

INTEREST ON ARREARS OF RENT.

Such interest is not liable to income-tax because it is purely agricultural income but it becomes taxable when the arrears are covered by bonds and are recoverable by civil suits. Thus it is evident that when a bond or a pro-note is taken in lieu of cash payment, interest which accrues on the bond or on the pro-note becomes taxable, irrespective of the fact that the capital invested is rent. When a landlord takes a promissory note from the rayat for the rent, the interest which accrues

on the promote, is not an agricultural income—*In re Raja Inugenti Raja Gopala Venkata Nara Singha Rajahem Bahadur*, 132 I. C. 189.

JALKAR, HATKAR IN PERMANENTLY SETTLED AREA.

Hatkar is always taxable but income from Jalkar is held not liable, provided the assessee can prove that such incomes were included on the asset at the time of the settlement with him or his predecessor in interest : *In the matter of Probbhat Chandra Barua*, 51 Cal. 504 : 106 I.C. 353 : A.I.R. 1925 Cal. 598 and also in the case of *Indu Bhusan Sarkar v. Commissioner of Income-tax, Bengal*, 1926 A. I. R. Cal. 819. The Patna High Court arrived at a similar decision in the case of *Maharajadhiraj of Durbhanga*, reported in 28 C. W. N. 49. But the Privy Council decision in the case of *Probbhat Chandra Barua* has finally set at rest the theory. There it has been laid down that Jalkars are taxable and that regulations do not exempt Zamindars from any general exemption. A. I. R. 1930 Privy Council 209. "In their Lordships' opinion, while the regulations contain assurances against any claim to an increase of the jama based on an income of the Zamindary income, they contain no provisions that a Zaminder shall in respect of the income which he derives from his Zamindary, not be subjected in respect of other income to any future general scheme of property taxation or that the income of a Zamindary shall not be subjected with other incomes to any future general taxation of incomes". Their Lordships agree with the views expressed by Justice Ghosh in the following passage from his judgment. "There was no promise or engagement of any description whatsoever by which the Government of the day surrendered their right to levy a general tax upon incomes of all persons irrespective of the fact whether they are Zamindars with whom the permanent settlement was concluded or not. (A. I. R. 1930 Privy Council 209, A. I. R. 1925 Cal. 598 affirmed). The income derived from leasing the right to fish in a tank does not constitute agricultural income—*In re. V.T.S. Sevupe P. Thaver* 140 I. C. 451.

Similarly maintenance allowance derived by a widow from an agricultural estate is not an agricultural income—*In re Rani Sultanat Begum*, A. I. R. 1933 (O) 475.

In the case of *Radha Mohon* reported in 104 I. C. 841 : A. I. R. 1928, Pat. 58, it has been laid down that a conquered Raja cannot claim any exemption for Jalkar.

Profits from the working of quarries and sale of stone :—

Such profits cannot be said to be agricultural income and are therefore assessable : *In the matter of Shiva Lal Gangaram*, 103 I. C. 417.

Toddy :—Income from toddy becomes agricultural when it is received by the actual owner or the lessee of the land on which the trees grow, otherwise such incomes are not agricultural : *In the matter of Yagappa Nadar*, 105 I. C. 489.

Manufacture of Salt :—In the case of *Lingga Reddi*, 104 I.C. 703 it was held that manufacture of salt is not agricultural.

MORTGAGE : AGRICULTURAL OR NOT.

The assessee, whose main source of income is from money-lending business, lends money on usufructuary mortgage of agricultural land without any stipulation for interest, such interest to be taken and enjoyed by him. The Income-tax Officer while making assessment decided that it is really a part of the profits and gains of his business and as such is not agricultural income exempt from assessment. The Madras High Court held, Justice Jackson dissenting, that "the income sought to be assessed was rent derived from land used for agricultural purposes and hence exempt from assessment". *Shabramanya Sastri Gopal v. Commissioner of Income-tax*, 57 Mad. 455. Similarly where there is a grant of loan on usufructuary mortgage with simultaneous lease back the income therefrom is agricultural, pure and simple (107 I. C. 683.) The case of *Shabramanya Sastri Gopal* was distinguished and dissented from. Similarly also in the case of *Mukunda Saurap*, A. I. R. 1928 All. 81 F. B., it was held that where usufructuary mortgagee leases mortgaged property to the mortgagor on fixed annual payments, such payments are purely agricultural and should be excluded.

Agricultural income is exempt from the operation of the Indian Income-tax Act ; but section 2(1) is also applicable to mortgages in possession of lands, whether the mortgaged lands are leased back to the mortgagors or to strangers, irrespective of the motive.

The money which actually goes into the pocket of a pure usufructuary mortgagee is nothing short of rent or it may be profits of cultivation, pure and simple. The natural corollary therefore is that either it is derived from land used for agricultural purposes or it is income derived from land by agriculture—in any view of the case it is agricultural income.

If I may be permitted to draw an analogy, I can say, that the position of such a mortgagee stands on the same footing with that of the proprietor—he can sue for arrears of rents, eject tenants ; he is also liable to pay Government Revenue etc. It is therefore clear that in the case of a pure usufructuary mortgagee there is no liability to pay income-tax.

The above principle applies to pure usufructuary mortgage; but I do not see why this privilege should not be extended to cases where such a mortgagee leases back the mortgaged land to the mortgagor. To hold the case to be not of a usufructuary mortgage, is to misconstrue the subsequent lease. In the words of Justice Sulaiman in the case *Mukunda Svarup*, 31. I. C. 33, 51 M 455: "He has under the lease the right to recover rent though the revenue court which very often is a speedy remedy. He has also the security of the fixed amounts being paid to him regularly year after year with the option of entering into possession on the default of such payment. If he enters into possession after the ejectment of the mortgagor he is entitled to cultivate lands himself or to let the lands to tenants and receive profit from them. Under these circumstances it seems impossible to hold that the position of the assessee is that of a purely simple mortgagee who is liable to pay income-tax."

In *Muhammad Yakub Khan v. Commr. Income-tax* 31. I. C. 308, the principle enunciated is that when a mortgage though described as with possession, is really a simple mortgage with right to appropriate fixed sum for the money lent and nothing more, and the amount thus received is not agricultural income.

In the case of *Rajni Prasad Singh*, 9 Pat. 194; 4 I. T. C 264, the Patna High Court held that although the parties called the mortgage usufructuary it was really a simple mortgage. Of course tax can be avoided lawfully, but the procedure adopted does not constitute it an usufructuary mortgage and therefore it is chargeable to income-tax—cases of *Mukunda Svarup*, 30 All 195 and *Indrimsa Rowther*, 51 M 455 are thus technically distinguished.

The Patna High Court in the case of *Commissioner of Income-tax, B. & O. v. Maharajadhiraj Sir Kameswar Singh of Darbhanga*, A. I. R. 1934 Patna 178 (vide Income-tax Law Reports), made a judicial pronouncement. The assessee lent money on two bonds, the first is a *zuripeshgi* lease with a usufructuary mortgage and the latter is a *thika* lease. The bonds provided for annual appropriations towards the principal of the loan. If at the end of 15 years the whole of the principal had been paid off the estate was to be handed back to the lessor mortgagor, otherwise it was to continue until satisfaction of the whole loan. It was held that the assessee lessee was in possession of both the properties, and, in his relation to the cultivators of the soil, he is in the position of a landlord dealing directly with them and collecting rents. In short, the assessee is in a position to take all proceedings which the mortgagor would have been able to take in the ordinary course if

the lands leased and mortgaged had remained in her possession.

The estate is in every sense in the possession of a landlord of land used for agricultural purposes and the assessee is in the position of a landlord with respect to the actual cultivating tenants within the meaning of the term under the Bengal Tenancy Act and the income derived from the land must be agricultural income within the meaning of the Act and is, therefore, exempt from taxation.

The source of income must be considered in its proximity rather than in its ultimate significance. The intention of the assessee in making the investment is immaterial. It is conceivable that the assessee may have intended ultimately to purchase the mortgaged property in order to add it to the rest of his zemindari rather than to obtain the repayment of the loan in the ordinary way—as per *C. J. Courtney Tirrel*.

UNDER RENT OR REVENUE.

The Income-tax Act does not define the term “Rent”. In the absence of any definition, I shall have to look to the other Act for its proper definition.

In the T. P. Act, Rent has been defined in s. 105 thus :—

“A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promised or of money, a share of crops, service, or any other thing of value, to be rendered periodically or on specified occasions to the transferor, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.”

Section 3(5) of the Bengal Tenancy Act gives the definition thus : “Rent means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant.”

“In sections 53 to 68, both inclusive, sections 72 to 74 both inclusive, Chapter XII, Chapter XIV and Schedule I of this Act, ‘rent’ includes also money recoverable under an enactment for the time being in force as it was rent”—as per *S. C. Sen* in his Bengal Tenancy Act.

In Madras Act 1 of 1908, “Rent” has been defined in s 3(1)

“Rent means whatever is lawfully payable in money or

kind or in both to a landholder for the use or occupation of land in his estate for the purpose of agriculture and includes whatever is payable on account of the use and enjoyment of water supplied or taken for cultivation of land, where the charge for such water has not been consolidated with the rent payable for the land.

- (a) Any local tax or cess, fee or sum payable by a raiyt as such in addition to the rent due in respect of land according to law or usage having the force of law and also money recoverable under any enactment for the time being in force as if it was rent.
- (b) Sums payable by a raiyat as such on account of pasturage fees and fishery rents.

Thus rent or revenue derived from agricultural land is not taxable.

LANDLORD'S FEES.

An important question arises whether landlord's fees payable by tenants are "income" within the meaning of the Act or are rent or revenue derived from the land.

In the Bengal Tenancy Act under sec. 26A, the following objects and reasons occur ".....In most cases, the transferee secures recognition by going to the landlord either immediately after the sale or at a later period and paying him a salami the arrears of rent due from the old tenant. The amount of salami is not fixed, and in some cases the landlord is unwilling for some reason or other to accept the transferee as his tenant and the result is litigation on which no positive law can be applied. The remedy proposed is to recognise the existing widespread practice of transfer and to admit transferability of occupancy holdings subject to payments of a fixed rate of salami (called landlord's transfer fee) at the time of the transfer and to other safeguards necessary to protect the interest of the landlord and to secure the general welfare of the agricultural community. The salami or landlord's transfer fee has been fixed at 25 p.c. of the consideration money or six times the rent, whichever is greater....."

I think it is better to put both sides of the shield to come to a definite opinion.

It is said that at all events in the cases of fees paid by the transferee, these are not in any sense of the word "Rent" or "Revenue" derived from land, they do not arise out of the creation of a new tenure. It is said that the money is something in the nature of damage for a breach of contract or as stated in the judgment of Justice Mukherjee in *Birendra*

The mere fact of a conveyance being taken by the father in his son's name jointly with his own, would not raise a presumption in India, as in England, of an advancement in favour of the son—*Gulam Zafar v. Masheden*. The mere circumstance that he has opened in his books an account in the name of his son, crediting some money to the latter cannot give rise to the presumption that the father creates or intends to create in favour of the son a trust in respect of the son so credited.

DOCTRINE OF ADVANCEMENT.

In the English Courts a presumption is made in cases when the person in whose name the property is purchased is the lawful wife or child of the purchaser or some person towards whom he stands in loco parentis, that the purchaser intended the ostensible grantee to take beneficially under the purchase—*Dyer v. Dyer*, *Kishen v. Sterncson*, 2 W. R. 141.

But this presumption does not apply to cases arising either among Hindus or among Mahomedans in this country—*Gossain v. Gossain*, 6 M. I. A. 53 ; *Uttar Ali v. Uttar Fatima*, 13 M. I. A. 232.

FIRM, PARTNERSHIP—DEFINED.

The Indian Income-Tax Act depends on the meanings of "Partnership" and "Firm" in the Indian Contract Act of 1872.

Section 239 of the Contract Act runs thus :—

"A partnership is the relation which subsists between persons who have agreed to combine their property, labour or skill in some business, and to share the profits thereof between them.

Persons who have entered into partnership with one another are called collectively a firm"

A firm cannot be legally a partner of another firm—*In re Jaydayal Madangopal*, 61 I. C. 226.

COMPANY.

A company not registered under the Company's Act or under the Income-Tax Act, which is a partnership of 13 unregistered firms composed in turn of individual members, exceeding in the aggregate of 20, is not a company as defined in section 2 (6) of the Act, but is a firm or other association of individuals contemplated by section 3 of the Act—*Sri Gopalji Co., v. Commr. of Income-Tax*, A. I. R. 1931, L. 376.

“PROCESS ORDINARILY EMPLOYED BY A CULTIVATOR”

The process ordinarily employed by cultivator must mean one in ordinary use amongst cultivators generally. The I. T. Act, so far as agricultural income is concerned only relieves the producer from liability to tax, so long as he is a *bonafide* agriculturist carrying on the business in the ordinary course of good husbandry. When cotton is first ginned and then sold in market, then although it may be directly advantageous even from the point of view of transport to do so, that ginning is essential in order to enable the producer to be taken to market—*In re Sheolal Ramlal*, 139 I. C. 316.

Under sec. 2 (2) where the cultivator or the receiver of rent-in-kind employs ordinary process, *e.g.*, natural process for consumption in the market, such process exempts him from any liability. In the case of *Bhikampur Sugar Concern*, 53 I. C. 309 : A. I. R. 1919 Pat. 377 F. B. it was held that the process of manufacture is one not ordinarily employed by cultivator and hence income received is not agricultural. Chief Justice Dawson Miller observes : “The truth is, in my opinion, that the Bhikampur concern was really acting in a dual capacity. In so far as they were cultivators of sugarcane their operations ceased when they handed over the raw materials to their factory branch. In so far as they were manufacturers of refine sugar they were carrying on a business which required the adoption of manufacturing process not ordinarily used by cultivators before disposing of their produce in the market. In fact there is no evidence to show that any other sugar factories of this nature convert into refine sugar produce grown on their firms but even assuming that there may be a few isolated instances in which this is done, it cannot in my opinion be said that this process of manufacture is one ordinarily employed by cultivators”.

In the *Killing Valley Tea Company v. Secretary of State*, 48 Cal. 161 : 32 C. L. J. 421 : 61 I. C. 107, the Calcutta High Court observes : “The manufacture of tea, as a marketable commodity from the green leaves, cannot be held to be the performance by a cultivator of a process ordinarily employed by a cultivator, to render the produce raised by him fit to be taken to market,” (Judgment of Sir Ashutosh Mukherjee, acting Chief Justice); “The earlier part of the operation where the tea bush is planted and the young leaf is selected and plucked may well be deemed to be agricultural. But the latter part of the process is really manufacture of tea and cannot without violence to language be described as agriculture.”

Cultivator :—The term denotes any person who applied the

process of agriculture ; thus any person who cultivates himself or through others comes within the category of cultivator.

"Building in the immediate vicinity of the land" :—All agricultural building provided they are in the immediate vicinity of the land are exempt from tax simply because such buildings are essential to the receiver of rent or the cultivator by reason of his connection with the land. What is in the immediate vicinity or not is a question of fact.

Buildings occupied by Zamindars :—u/s 2 (c). The annual value of any building occupied by the Zamindar for collection of rent (cutchery or bungalow) is purely agricultural. The income-tax officer is only to determine whether such building is necessary for his connection with the land. Income-tax authorities have no jurisdiction to determine what portion of the building is, as a matter of fact, required by the assessee in his capacity of receiver of rent. Thus the receiver of rent is within his rights to claim the entire annual value as agricultural income : *In the matter of Rajendra*, 118 I. C. 593. This decision comes after the reported case of *Maharajahkeraaj of Durbhanga*, 111 I. C. 638 : A. I. R. 1928 Pat. 468. The word market implies a real centre of economic exchange and the purchase by Tails is merely an artificial condition having no relation to a market for agricultural produce, *In re T. M. Casey*, A. I. R. 1930 Pat. 44.

DEFINITION OF "ASSESSEE" (PARA 3 OF INCOME-TAX MANUAL) :—SECTION 2(2).

"Assessee" is defined to mean a person by whom income-tax is payable. Income-tax includes super-tax which is defined in section 55 to be "an additional duty of income-tax". Under section 3(39) of the General Clauses Act, the word "person" includes any company or association or body of individuals whether incorporated or not. "Assessee" refers to a living person and an assessment u/s 23 (4) cannot be made on his death after failure to make return.—*In re : Ellis C. Reid* A. I. R. 1931 Bom. 333.

The charging sections (sections 3 and 55) lay down who the persons and associations are who are liable to income-tax and super-tax. Income-tax is payable under section 3 by every individual, Hindu undivided family, company, firm and other association of individuals, and super-tax under section 55 is payable by every individual, Hindu undivided family, company, unregistered firm or other association of individuals not being a registered firm. While both income-tax and super-tax, therefore, are payable by every individual, Hindu undivided family, company and other association of individuals

not being a firm, there is a distinction in the case of firms. All firms whether registered or unregistered are liable to pay income-tax but while unregistered firms are liable to pay super-tax, registered firms are not. The income of registered firms is liable to super-tax in the hands of the individual partners of the registered firm. Co-operative Societies, Clubs (not being companies) and Chambers of Commerce are examples of "association of individuals".

Provident funds of private companies and firms should not be assessed to income-tax as "other associations of individuals", otherwise than by deduction at the source upon their income from investments and should not be charged to super-tax at all. They are also eligible for refund of tax under section 48 if they comply with the provisions of that section.

COMMENT.

The definition of assessee is rather complex. The act says that the assessee means a person by whom income-tax is payable. Thus it is clear that strictly speaking an assessee is a person from whom income-tax has been levied. But in practice however an assessee is a person on whom a notice under section 22(2) or (1) has been served no matter whether he is liable to assessment or not. As a matter of fact the term assessee has been very loosely applied making the meaning broader than what the Act actually means. Thus we find that it would be very difficult from the definition of the word "assessee" to exclude the representative of the estate responsible for the tax and a person representing an estate for the payment of income-tax would also represent it for the payment of refund: *In the matter of Govinda Saran*, 105 I. C. 556. The case reported in A.I.R. 1930, Pat. 81 where it was held that 'a suit does not abate on the death of the assessee and his heirs can be substituted' makes the meaning of assessee broader. But under section 27, referred here after it is doubtful whether the heir has got any *locus standi* to file any objection under section 27.

DEFINITION OF COMPANY.

This definition includes all company constituted in the dominions of the Crown, while the latter part of the definition is confined to such foreign associations as the Central Board of Revenue may desire to treat as companies for the purposes of the Act. The object of this latter part is to include associations such as the France Society and Anonymes which, though incorporate bodies, have many characteristics in common with the companies recognised by our law, if the Central Board of Revenue thinks that they should be treated as companies for the purposes of the Act. (I. T. Manual, para 4).

"PERSON" INCLUDES "A HINDU UNDIVIDED FAMILY."

Tax can be levied on individual, unregistered firm, registered firm, association of individuals, limited company and on undivided Hindu family. The word "person" clearly includes a firm as provided by the General Clauses Act and when the Return is made on behalf of the firm, it is the firm that is the person who makes the return and any proper service on the firm will be valid service.

ASSESSMENT OF HINDU UNDIVIDED FAMILY.

Hindu undivided family is considered as a single unit for income-tax purposes and the assessment is mainly connected with trading families. Profits of a trading family venture are taxed as H. U. F., but this must not include separate or self-acquired income, if any, of any individual member constituting the H. U. F. Such a member can only be taxed for his personal income as an individual. The Act never contemplates that an earning member of the H. U. F., should be assessed along with the H. U. F., for his individual income. As for example *A, B, C* three brothers constitute a H. U. F. They carry on their ancestral cloth business. *B* is a medical practitioner and has got a busy practice but this income of *B* cannot be amalgamated with the profit of the cloth business and any such amalgamation is an abuse of power not vested in the income-tax officer.

JOINT FAMILY PARTITION.

As a matter of fact a joint family can be partitioned in several ways, *viz.*, by a partition suit, by a deed of partition, by a decree of Court or even by an agreement; but question of partition is a mixed question of law and fact. The Hindu undivided trading family may exist, the business may continue, still the members may not belong to a Hindu undivided family. For their benefit the joint business continued but the family separated. In such cases the income-tax authorities must treat them as unregistered firm as has been laid down in the case of *Hari Singh Santokchandul*. As to the disruption of joint family, section 25A contains how assessments are to be made in the case of Hindu undivided family claiming partition.

STRIDHANAM.

Instances are not rare when assessee declares that a particular building belongs to his wife or that his son is the real owner of the building by virtue of the money received by him during his Annaprasanam. The income-tax authorities are often beset with these questions and they are the sole judges of facts. Where the assessee can prove to the satisfaction of

the authorities that the particular building or particular investment really belonged to his wife or son, the income-tax authorities are bound to accept the statement; but where no clear explanation is forthcoming, circumstances should be the guiding factor inasmuch as *benami* transactions are so very common and rampant that no statement can be accepted without proper proof. The assessee can make a declaration in a verified petition or can file an affidavit.

REGISTRATION OF JOINT FAMILY FIRM.

A Hindu undivided family firm can be registered under sec. 2(14) [as to registration *vide* notes under sec. 2(14)].

DEFINITION OF "PREVIOUS YEAR" [SECTION 2(11)].

Under section 3 of the Act, assessable income is to be computed with reference to a fixed period which is known as the "previous year". This fixed accounting period, the income, profits and gains of which alone are taken into consideration in making an assessment, is treated as isolated, without any consideration of what went before or what came after. The definition of the phrase "previous year" in the Act of 1918 restricted the accounting period to a period of 12 calendar months. The period of 12 calendar months was the period ending on the 31st day of March next preceding the year for which the assessment was to be made, but the assessee was given an option of adopting a year of 12 calendar months ending on a date other than the 31st of March if that was the date up to which his accounts were made up. This gave rise to difficulties in the case of certain communities, whose commercial year is not necessarily a calendar year, but is a period which, expressed in calendar months, varies from year to year, and in one year may be slightly over and in another slightly under 12 months. Again, under the definition in the Act of 1918, any year which was adopted in place of the financial year had to terminate at some period within the previous financial year and as there are numerous cases where the commercial year terminates in the month of April, the returns and accounts on which the assessment was based in such cases related to a period more than 12 months prior to the date of assessment. While the definition of the phrase in the Act of 1918 has been repeated practically without alteration in clause (a) of this sub-section, clause (b) is a new provision providing for the difficulties referred to above. Under this clause the Central Board of Revenue or the Commissioner of Income-tax in a province, if authorised by the Central Board of Revenue, may determine as the "previous year" a commercial year which may be slightly over or slightly under 12 months and which may terminate on a date subsequent to the end of

the previous financial year. The Central Board of Revenue has authorised the Commissioner of Income-tax in each province to determine as the "previous year" in the case of any person, business or company, or class of persons, business or company.

- (a) a commercial year which may consist of more or less than 12 months, provided that no commercial year which may extend to less than 11 or more than 13 calendar months in any one year shall be so determined ; and
- (b) a commercial year terminating after the end of the previous financial year, provided that no commercial year terminating later than one month after the end of the previous financial year, shall be so determined.

Where the Commissioner desires that a "previous year" should be recognised which does not come within his powers of sanction as stated above, he must obtain the orders of the Central Board of Revenue.

Income-tax Officers are, therefore, debarred from treating as a "previous year" any period which does not come within the definition in clause (a) unless such "previous year" has been sanctioned either by the Income-tax Commissioner or the Central Board of Revenue.

Under the proviso to clause (a) an assessee who has, after the 31st March 1922, once exercised the option of selecting as his "previous year" a year terminating on a date other than the 31st day of March within the previous financial year, may not again exercise that option except with the consent of the Income-tax Officer, and upon such conditions as he may think fit. Income-tax Officers in dealing with such cases, and Commissioners in dealing with cases under sub-clause (b), should take steps to secure that the changing over from one previous year to another shall not result in any loss of revenue. The convenience of an assessee in this matter must be studied so far as possible, as it is desirable that the accounting period for income-tax purposes should be the same as the accounting period according to which an assessee makes up his accounts for the purposes of his business, but in the actual year of change condition should be laid down sufficient to secure that the substitution of one year for another shall not result in any profits of an assessee escaping assessment.

If an assessee closes his accounts on different dates for different business or different sections of the same business, or different sources of income his income should be calculated

separately for each business, section of business or source, according to the accounting year adopted for it and the aggregate of the incomes thus computed should be treated as the income of the previous year. Each of the years of which the income is thus added together must, of course, satisfy the definition of "previous year" in section 2(11) of the Act with reference to the same year of assessment. (Para 6 of the I. T. Manual.)

Previous year :—Under section 2(11) all that the law requires is that the tax must be levied on the income of the previous year, no matter whether it consists of 12 months or not. There cannot be any valid objection by the assessee on the ground that his previous year is incomplete in the sense that it is less than 12 months. Thus there cannot be any question of non-liability on the ground that a particular business has not been conducted for 12 months. An assessee who had no business for the whole year is nevertheless liable to tax for his incomplete previous year : *In the matter of Nanakchand*, 96 I. C. 368 : A. I. R. 1926, Lahore 421. But this does not mean that the Income-tax authorities can make an assessment in 1931-32 where the business has its accounting year from Agra-hayan, 1337. Thus a proper meaning of the previous year is a matter of great importance and leave to appeal to His Majesty in Council was allowed : *In the matter of M. M. I. Raja Melek*, 35 C. W. N. (Notes).

SEVERAL BRANCHES.

A person may have several branch businesses with altogether different previous years, e.g., A has got a business at Calcutta with the accounting year as Bengalee calendar. He subsequently starts a business with Rathajatra year and another business from Kartick. In the return under section 22(2) he shall have to declare his previous year. In 1930-31 he is asked to file his return for the previous year. He must show that such income arose during the previous year ending 1336 B. S., Rathajatra year 1985-86 and from Kartick to Aswin 1336 B. S. Unless all the different accounting periods are shown in the return, it may be declared invalid or incomplete and an assessment under section 23(4) will stand. On the other hand the Income-Tax Authorities are not entitled to reject the books of account on the ground that different accounting periods have been adopted. It is beyond their jurisdiction to reject the books of account or to make an estimated assessment on the ground that different accounting periods have been adopted.

SUCCESSION UNDER SECTION 26.

Naturally and equitably the successor in interest must be allowed to have his own accounting year, irrespective of the

accounting years followed by his predecessor. Of course the successor is liable for the tax of his predecessor but that does not cripple the assessee of his power to follow an accounting year, not followed by his predecessors nor does this entitle the income-tax authorities to reject the account or to proceed on an estimated assessment on a turn over basis under sec. 13 of the Act. But where no method of accounting has been employed assessment on estimate is justified.

CHANGE IN THE CONSTITUTION OF FIRM.

There may be cases when a firm may be dissolved or new partners may be incorporated. The firm which is considered as an assessee is bound to follow the same previous year unless there has been a wholesale change of the partner resulting in the formation of a new firm.

DEFINITION OF PRINCIPAL OFFICER.

Income-tax Officers should treat as the principal officer of a local authority or company or other public body or association in the first instance the official specified in clause (a); it is only in cases where the I. T. O. has no information regarding the persons who discharged the function of the officers mentioned in clause (a) or where such person cannot be found, that he should use the power conferred by clause (b) of treating as the principal officer any other person connected with the company, public body or association. (Para 7, Income Tax Manual). The Official Liquidator of a company can be treated as its Principal officer and if he is managing the business he comes within the definition of the "Principal officer"—*In re Agra Spinning and Weaving Mills Co. Ltd.* A. I. R. 1934 All. 170.

MEANING OF THE TERM 'LOCAL AUTHORITY'.

"Local Authority", a phrase used in sections 2(12), 4(3) (III), 7 and 21 is defined in section 3(28) of the General Clauses Act as "A Municipal Committee, District Board, Body of Port Commissioners or other authority legally entitled to or entrusted by the Government with the control or management of a Municipal or Local Fund." (Para 8 of I. T. Manual).

REGISTERED FIRM.

Any firm constituted under an instrument of partnership specifying the individual shares of the partners may, for the purposes of clause (14) of section 2 of the Indian Income-tax Act, 1922 (hereinafter in these rules referred to as the Act) register with the Income-tax Officer the particulars contained in the said instrument on application in this behalf made by the partners or by any of them.

Such application shall be made—

- (a) before the income of the firm is assessed for any year under section 23, or

- (b) if no part of the income of the firm has been assessed for any year under section 23, before the income of the firm is assessed under section 34, or
- (c) with the permission of the Assistant Commissioner hearing an appeal under section 30, before the assessment is confirmed, reduced, enhanced or annulled, or, if the Assistant Commissioner sets aside the assessment and directs the Income-tax Officer to make a fresh assessment, before such fresh assessment is made. (Rule 2).

The application referred to in rule 2 shall be made in the form annexed to this rule and shall be accompanied by the original instrument of partnership under which the firm is constituted together with a copy thereof: provided that if the Income-tax Officer is satisfied that for some sufficient reasons the original instrument cannot conveniently be produced, he may accept a copy of it certified in writing by one of the partners to be a correct copy, and in such a case the application shall be accompanied by a duplicate copy.

Form of application for registration of a firm under section 2(1-A) of the Indian Income-tax Act, 1922.

To

The Income-Tax Officer,

Dated 19 .

I
We

beg to apply for the

registration of my firm under section 2 (1-A) of the Indian Income-tax Act of 1922.

The original
A certified copy of the instrument of partnership under which the firm is constituted specifying the individual share of the partners together with a copy duplicate copy is enclosed. The prescribed particulars are given below.

I
We do hereby certify that the profits for the year ending
“ ” have been or will be actually divided or credited in accordance with the shares shown in this partnership deed.

Signature.....

Address.....

Name and address of the firm.	Names of the partners in the firm with the share of each in the business	Date on which the instrument of partnership was executed.	Date, if any, on which the instrument of partnership was last registered in the Income-tax Officer's office.	Remarks.

I
We

do hereby certify that the

information given above is correct.

Signature (s) (Rule 3).

(1) On the production of the original instrument of partnership or on the acceptance by the Income-tax Officer of a certified copy thereof, the Income-tax Officer shall enter in writing at the foot of the instrument or copy, as the case may be, the following certificate, namely :—

“This instrument of partnership (or this certified copy of an instrument of partnership) has this day been registered with me, the Income-tax Officer for in the province of under clause (14) of section 2 of the Indian Income-tax Act, 1922. This certificate of registration has effect from the day of April 19 up to the 31st day of March 19 .”

(2) The certificate shall be signed and dated by the Income-tax Officer who shall thereupon return to the applicant instrument of partnership or the certified copy thereof, as the case may be, and shall retain the copy or duplicate copy thereof. (Rule 4).

The certificate of registration* granted under rule 4 shall have effect from the date of registration.

A certificate of registration granted under rule 4 shall have effect up to the end of the financial year in which it is granted but shall be renewed by the Income-tax Officer from year to year on application made to him in that behalf and accompanied by a certificate signed by one of the partners of the firm that the constitution of the firm as specified in the instrument of partnership remains unaltered. Such application shall be made within the time and subject to the conditions, if any, which are specified in clause (a), clause (b), or clause (c), as the case may be of rule 2. [Rule (6)].

REGISTERED AND UNREGISTERED FIRMS.

Rules 2 to 6 prescribe the method of registering a firm. A firm to be registered must be constituted under an instrument of partnership which definitely specifies the individual shares of the partners in the profits of the firm. The deed of partnership to be registered both for purposes of assessment to income-tax and super-tax is that in force in the year in which the assessment is made. An application for registration may be made at any time before the assessment of the income of the firm is made but it is desirable that the application should accompany the return under section 22(2) of the Act. If an application is made after the assessment of the firm, it should be returned to the person presenting it as out of time. Even if such an application is accepted it can have no effect on the assessment for that year, *vide* Case No. II (in Volume II) decided by the Allahabad High Court. The distinction between a registered and unregistered firm for the purposes of this Act is:—

(1) Income-tax is assessed upon the profits of a registered firm at the maximum rate whatever the amount of the profits of the registered firm may be (*see* Finance Act); and a member of such a registered firm, on satisfying the Income-tax Officer that such maximum rate is higher than the rate applicable to his "total income," may get a refund on his share of those profits calculated at the difference between the two rates [*see* section 48 (2)], such share of the profits being included in the "total income" of such member for the purpose of determining the rate applicable (*see* section 16 (1)). In the case of an un-

registered firm income-tax is levied on the income of the firm at a rate graded according to the profits of the firm as if it were an individual (*see Finance Act*); a member of such firm is not entitled to any refund, but his share of the profits of the firm is included in his "total income" for the purpose of determining the rate at which he shall pay income-tax on any other income [*see section 16(1)*].

The profits of a registered firm are liable to tax at the maximum rate even if they are less than Rs. 2,000, while an unregistered firm is not liable to income-tax, if its profits in any one year are less than Rs. 2000. But where the profits of an unregistered firm are not assessed to income-tax, they are liable to tax in the hands of the individual members of the firm that is, they are included in the assessable income of the individual member [*see Finance Act and section 14 (2) (b)*].

(2) A registered firm is not liable to super-tax, the share of individual members in the profits of such a firm being included in the income of each individual member for the purposes of super-tax. An unregistered firm is, however, liable to super-tax (like an individual) on that amount of the profits of the firm which is in excess of Rs. 30,000 (*see Finance Act and section 55 of the Income-tax Act*). Super-tax is not payable by an individual having a share in an unregistered firm in respect of the profits of the unregistered firm except in cases where the profits of the unregistered firm have not been assessed to super-tax (*see section 55 proviso*). (Para 10 of I. T. Manual).

"The deed of partnership to be registered both for purposes of assessment to income-tax and super-tax is that in force in the year in which the assessment is made. An application for registration may be made at any time before assessment is made of the income of the firm but it is desirable that the application should accompany the return under section 22(2) of the Act. If an application is made after the assessment of the firm, it should be returned to the person presenting it as out of time. Even if such an application is accepted it can have no effect on the assessment for that year: *vide* case No. in volume 2 decided by the Allahabad High Court". Thus the old theory that the application for registration must be made on or before filing the return as reported in 86 I. C., 851 in the case of *Parusatum Bhargi & Co.* is no longer a good law in view of the amendment made in 1930.

REGISTRATION UNDER SEC. 34 IF PERMISSIBLE.

When a notice under section 34 is served on an assessee who is said to have concealed his sources of income at the time of assessment, the right to apply for registration is forfeited

but if it is a case where notice under section 34 has been issued for the first time before any assessment was attempted, the assessee is entitled to have registration at any time before assessment is made and the income-tax authorities have no jurisdiction to refuse registration.

WHO CAN PRESENT APPLICATION FOR REGISTRATION.

An application for registration can be filed by partner having interest in the firm at the time of presentation of the application. Income-tax is assessed on the profits of registered firm at the maximum rate at the rate of 19 pies per rupee or according to the Finance Act, no matter if it is even below Rs. 2,000. The maximum rate in 1931-32 is 26 pies. In a registered firm the deed of partnership enjoins that the partners must have specific shares and there must be allocation of profits and subsequent division amongst the members. In case of no such allocation or division the profits are taxable under the law.

JOINT FAMILY.

The registration of brothers as a firm is defined under section 2 (12) of Act 7 of 1918 and it precludes the assessment of the family as an undivided family to super-tax on the income derived from business of the firm unless the firm so registered has been shown to carry on its business for the benefit of the joint family : *In the matter of Doraiswami*, 74 I. C. 22 : A.I.R. 1923 Mad. 682.

Application for registration by Agent :—Having regard to the effect of the registration of a firm upon the incidence of super-tax, it is essential that an application for registration should be signed by at least one of the partners. An application by the Agent does not amount to a compliance of the statutory rules and no effect should be given to such application—*In re C.T.A.C.T. Nachiappa*, A.I.R. 1933 (R) 230.

REFUSAL TO REGISTER FIRM,—IF APPEALABLE.

The Income-tax Authorities are entitled to refuse registration if they are convinced that the instrument of partnership is bogus and not genuine and is meant to hoodwink the department. And once this finding is arrived at the High Court cannot interfere as the findings of facts are to be considered valid. The amendment Act of 1930 empowers the I.T.O. to cancel registration where assessment is made under section 23(4). It is not open to the High Court to go into the facts of the case and to determine whether the I.T.O. was right in his finding of facts, 121 I. C. 332 : A. I. R. 1929 Pat. Sec. 30 does not empower an assessee to prefer an appeal against refusal by the I.T.O. Where an individual partner or partners are affected, the appellate authorities should consider the

matter in appeal. When registration is allowed, assessment is not annulled but is remanded for proper re-computation of the tax.

PARTNERSHIP.

There may be a valid partnership between husband and wife as reported in *In the matter of Ambalal Sarabhai*, 77 I. C. 699 : A.I.R. 1924 Bom. 182. But in the case of *Bulechand Keshav Das*, A.I.R. 1930 Sindh 301, it was held that the execution of the partnership deed by the managing partners (*gomosta*) is to be regarded as an instrument of partnership within the meaning of section 2 (14). A firm may be composed of the same partners as in another firm and partners may be interested in the same shares but it may be an entirely different firm : *In the matter of Martin & Co.*, 50 C.L.J. 333 : A.I.R. 1929 Cal. 753 : 124 I.C. 519.

ONE-MAN COMPANY.

Under the law as it stands one-man company can also be registered under the law. In the case of *Sir Dinshaw Maneckjee Petit, Bar-at-Law*, 102 I. C. 49 : 29 B.L.R. 447, it has been held that "the court can go into the question as to whether the so-called one-man company is really a business carried on by the assessee himself for the purpose of avoiding payment of tax. The company was not a genuine company at all but merely the assessee himself disguised under the legal entity of a limited liability company. The company was formed by the assessee purely and simply as means of avoiding super-tax and that the company was nothing more than the assessee himself. It did no business but was created purely and simply as a legal entity to ostensibly receive the dividend and interest and hand them over to the assessee as pretended loans."

POWER OF I. T. O. AT THE TIME OF REGISTRATION.

Where an application is made by a member of the Hindu undivided family for registration as firm with deed of partnership attached, the I. T. O. has power to call for evidence of dissolution of joint family over and above the partnership deed : *In the matter of Bisseswar Lal Brijlal*, 34 C. W. N. 363 : A.I.R. 1930 Cal. 449. In cases where income-tax is levied at source, e. g., at the time of encashment of the G. P. Notes, bank interest, the assessee can apply for a certificate of exemption. Grant of certificate to a firm enures for the year for which it is stated in the certificate to take effect : *In re : Hosenbhai Bohri*, 89 I.C. 92 : A. I. R. 1925 Nag. 415. "Where a body of persons purporting to be a firm as described in section 2(14) apply to get themselves registered as a registered firm, the I. T. O. has power to in-

investigate whether they really do constitute a firm and to call for evidence as to the reality of instrument of partnership produced by the applicant. Therefore where the members of the joint family who had been formerly assessed as such apply to be registered as a firm the I. T. O. has power to call for evidence of dissolution of joint family for the purpose of registration under section 2, over and above the documentary evidence by the partnership deed in support of the application". *In the matter of Bisseswar Lal Brijlal*, 128 I. C. 327 : 34 C. W. N. 363 : A. I. R. 1930 (Cal.) 449.

Under section 2(14) the Income-tax Officer cannot refuse to recognise a firm for registration where the deed of partnership has got specification of shares and all particular details. It is beyond his competence to refuse registration ; but in the case of *Tikabhi*, 121 I. C. 38 : A.I.R. 1930 (Nag.) 6, it is stated that the certificate to be given in the form prescribed in the income-tax rules is not that the profits are to be allocated and credited within a specified period. So where a certificate is issued in good faith and the persons constituting a firm want to allocate the assets whenever it may be necessary or convenient to do so, that firm is entitled to have registration. H. U. F. members applying for registration as firm under a partnership deed, cannot be registered as such, when the finding is against separation and registration cannot be allowed. The mere execution of the deed does not discharge the onus of establishing that the Hindu family stands divided—*In re Ghan-shym Das Ramkumar*, 6 I T. C. 198 : whether the I. T. O. has power to enquire whether a person or persons is or are what he or they represent themselves to be for the purpose of taking advantage of a provision of the Act. Where persons claim to constitute a partnership firm for the registration of which they make an application, the I. T. O. may call on them to prove by evidence that they are what they claim to be before he proceeds further with the application—*In re Zattu Shah*, A. I. R. 1932 (L.) 515.

In re Bai Sakinaboo, 137 I. C. 903, it was held that there was no partnership within the meaning of section 239 of the Contract Act. (*vide also Haridas Premji*, A. I. R. 1932 Cal. 409).

CHANGE IN PARTNERSHIP BETWEEN REGISTRATION AND ASSESSMENT.

Where there is a change in the constitution of a firm as to partners between the date of registration and the date of assessment, complication arises whether the new partnership should be treated as a separate entity or should be regarded as the same entity. Where the change in the constitutions

practically results in the dissolution of partnership the income-tax authorities are bound to treat them as a separate assessee and are bound to call for a fresh return and fresh application for registration. The fact that return has been filed and application for registration has also been filed by the old partners will have no effect.

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DEFINITION OF TOTAL INCOME.

The phrase "total income" is used in sections 3, 15(3), 16(1), 17, 22(1) and (2), 23(1) and (3), 48, 55 and 56. The necessity for the definition and for the use of the phrase is due to the fact that, as stated in paragraph 3, tax is payable not only by individuals but also by firms, companies and Hindu undivided families; that is, the Act provides for taxation at the source in certain cases and for taxation in the hands of the individual recipient in others. Whether, however, tax is deducted at the source or in the hands of the individual recipient, it is the total income of the individual recipient from all sources to which the Act applies that determines his liability to income-tax (that is, whether his total income amounts to Rs. 2,000), and the rate at which he has to pay income-tax on the whole of his income. The solitary exception is in the case of Hindu undivided families, income from which [under section 14(1) read with section 16 (1) of the Act] is not included in the total income of the individual recipient. Again, there are certain classes or portions of income such as the amounts deducted from salaries under the proviso to section 7(1), the sums paid on account of insurance premia under section 15, securities issued income-tax free by the Government of India or by local Governments under the provisos to section 8, on which income-tax is not payable, but all such sums are included in the total income of the assessee for the purpose of determining his liability to income-tax and the appropriate rate at which the tax shall be levied. There is, however no taxation at the source in the case of super-tax, nor are there any portions of income (other than income derived from a Hindu undivided family by a member or from an unregistered firm in the special case mentioned in the proviso to section 55) which are exempted from payment of super-tax and it is upon the total income that super-tax is chargeable in the hands of the individual. (Para 11 of the I. T. Manual).

REFUSAL TO REGISTRATION IF APPEALABLE.

As a matter of fact appeals are now allowed against any decision refusing to register. Under section 33 the Commissioner of Income-tax has also jurisdiction to entertain and adjudicate on the point if raised before him. An erroneous

decision by the Commissioner may result in reference to the High Court under section 66.

INCOME-TAX REFERENCE.

The Chief Justice, Mr. Justice C. C. Ghose and Mr. Justice Buckland disposed of the reference made by the Income-tax Commissioner in the matter of *Messrs Ramlal Muralidhar*, 58 Cal. 1005. (*Bulchand Keshavdas*, A. I. R. 1933, Sindh 301 ref.)

The Chief Justice in course of his judgment held that in this case it appeared that three persons together with a fourth, the mother of one of them, were carrying on business in co-partnership as dealers in piece-goods and as commission agents under the name of Ramlal Muralidhar. By memorandum of an agreement, dated 30th April, 1928 made between the three persons, it was decided that the parties together with Musamat Raju, mother of Ramlal would carry on business in co-partnership. It was agreed that the profits of the business should belong to the partners, the lady being declared to have 1/20 share therein. It was also provided that any loss should be borne by three partners rateably in proportion to their shares in the profits. The instrument containing the agreement was executed by the three partners and not by the lady. It was then tendered to the Income-tax Officer as instrument such as was contemplated by Cl. 14 of Sec. 2. The officer however refused to accept it.

In their Lordships' opinion it was not correct to hold that the instrument should be rejected. While saying nothing by way of the objection to the proposition that the Income-tax Officer might have right to satisfy himself that the transaction evidenced by the instrument was a real thing, their Lordships observed that if the Commissioner of Income-tax came to the conclusion that before the death of the lady, she assented to the instrument and when it was put forward for registration, it was put forward by her, among the partners, to be registered, it was in their Lordships' opinion that such a document as the one in question might be admitted to registration under the Income-tax Act. The assessee would have the costs of this application.

CHAPTER I.

Charge of Income-Tax.

3. Where any Act of the Indian Legislature en-acts that Income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of all income, profits and gains of the previous year of every *individual, Hindu undivided family, company, firm and other association of individuals*.

GRADUATION OF INCOME-TAX. (SECTION 3.)

The Income-tax Act deals merely with the basis, the methods and the machinery of assessment, and does not contain, as the previous Acts did, schedules specifying the rates at which income-tax shall be charged. These rates are determined by the Finance Act which is passed annually by the Central Legislature. The same remarks apply to super-tax (*see* section 55 of the Act), (Para 12 of the I. T. M.). The rates prescribed by the Finance Act have been shown under head "Rates under the Finance Act."

DEFINITION OF "INCOME" (SECTION 3).

Section 3 of the Act of 1918 provided that the Act should apply to "income". Difficulties were experienced in regard to the assessment of business profits owing to a High Court ruling that the word "income" in that section meant income actually or constructively received and that the use of the word in that sense in the said section restricted and limited any interpretation to be placed upon the following sections of the Act which specified the different classes of income liable to the tax. This interpretation would, if strictly followed, have caused considerable inconvenience in assessing business profits to those assesseees who keep their accounts not on the basis of sums actually received and sums actually paid out but on the principles of mercantile accountancy, by the preparation of a profit and loss account and the comparison of

the value of the stock in hand at the beginning and at end of each year, since such assesseees would have been required to recast the whole of their accounts on a cash basis for income-tax returns. There were other directions also in which so strict an adherence to the interpretation placed on the word "income" would have caused difficulties. For this reason the phraseology in section 3 and in other sections of the present Act has been re-worded. The plan adopted has been not to attempt a general covering definition of "income" but to prescribe that the tax shall be chargeable not upon "income" (whether "income" be deemed to mean actual receipts and expenditure or any other general definition) but in respect of "all income, profits or gains" as set out and defined in section 4 and sections 6 to 12 of the Act. If there is any class of income that does not fall within the words that impose the charge in those sections, that class of income is not within the scope of the tax.

For the method of accounting to be adopted in computing "income, profits or gains," see Para 13 of the I. T. M.

Accounting period to be adopted for determining assessable income.

ASSESSABLE INCOME (SECTION 3).

Under the Act of 1918 tax at the rates fixed for any year was levied on the income of that year. A provisional assessment was first made on the income of the preceding year and this assessment was subsequently adjusted and corrected when the income of the year in which the provisional assessment was made was ascertained. This system has now been abolished in the present Act which provides for the tax at the rates sanctioned for any year being assessed finally on the income, profits and gains of the "previous year" (see paragraph 6) and for the abolition of the adjustment system except in the cases specially provided for in section 25 and in the provisos to section 68 of the Act. The provisos to section 68 of the Act are merely temporary provisions providing for the transitional period in the year 1922-23 and the only exceptions to the general rule that assessments are made finally on the profits of the previous year are contained in section 25 of the Act. Under the first two sub-sections of section 25, in order to guard against a possible loss of revenue owing to delay in making assessments on the profits of business that close down during the course of a financial or commercial year, it is provided that in such case, in addition to the assessment on the income of the previous year, a further assessment may be made in the year in

which a business, profession or vocation is closed down on the income of that year. This is merely a discretionary and not an obligatory method of assessment to be adopted in exceptional cases where delay in making the assessment might lead to a loss of revenue.

The other class of cases provided for in sub-section (3) of section 25 is confined to those particular business, professions or vocations on which tax had been charged under the provisions of the Act of 1918. Since the abolition of the adjustment system meant that in the case of those particular business the tax would, had no special provision been made, have to be paid on the profits of one year more than under the system in force under the Act of 1918, it is specially provided that in the year in which such businesses, professions or vocations close down, the adjustment provided for in the Act of 1918 shall be made. (Para 14 of the I. T. M.)

ACT OF THE INDIAN LEGISLATURE—FINANCE ACT.

Income-tax can only be levied when the legislature by an enactment passes the Finance Act annually fixing the rates of income-tax and super-tax applicable for the year. Unless the Finance Act is passed notice under section 22(2) cannot be issued. In practice, the Finance Bill is passed once a year, in April. But in November 1931, a Supplementary Finance Bill was introduced and passed, imposing a surcharge on income-tax of 12½% for 1931-32 and 25% for 1932-33; and levying income-tax on incomes between Rs. 1,000/- and Rs. 1,999/- per annum.

FINANCE ACT.

Tax can only be levied when the annual finance Act comes into operation. The finance Act fixes the rate of income-tax for each assessment year. As the Income-tax Act deals merely with the basis, mode and the machinery of assessment, so the annual Finance Act works as a fillip by fixing the rate and any initiation of proceedings is *ultra vires*, so long it is not passed. Although the finance Act is passed once a year, generally in March, curiously enough a supplementary Finance Act was introduced and passed in November 1931, making the income above Rs. 1000 taxable and imposing a surcharge of 12½% for 1931-1932 and 25% for 1932-1933 and 1934-35. The rate of surcharge was 25% in 1933-1934, and in 1934-1935 it remains the same.

The right of the Finance Act to introduce a summary procedure in assessing income above Rs. 1000/- to Rs. 1999/- is very much resented, inasmuch as the Finance Act can not control the substantive Act without amending the Income-tax Act of 1922. The provisions relating to this summary proce-

cedure by the Finance Act became the subject from time to time of adhoc action.

EFFECT OF THE SUPPLEMENTARY FINANCE ACT.

The Income-tax Act deals merely with the basis, the method and the machinery of assesment, and does not contain, as the previous Act did, schedules specifying the rates at which income-tax shall be charged. These rates are determined by the Finance Act which is passed annually by the Central Legislature.

But the passing of the supplementary Finance Act has resulted in the modification of the Income-tax Act, so much so, that the finance Act does not only determine the rate of tax but it also guides the basis, method and procedure of taxation of what is popularly called "lower limit cases."

Section 3 speaks of rate or rates imposed by any Act of the Indian Legislature and that Income-tax shall be charged on such rates. Necessarily section 3 is a charging section and "income-tax" means income-tax and super-tax. "Surcharge" is no doubt an additional income-tax and the imposition of surcharge under the Annual Finance Act cannot be legally challenged inasmuch as the Finance Act provides that the rate of Income-tax and super-tax shall be increased to such an extent and therefore imposition of surcharge is more for rate than for any procedure and up to this there cannot be any objection, serious or otherwise.

But the introduction of summary procedure for incomes above Rs. 1000/- up to Rs. 1999/- by the Finance Act is something novel and it seems to me that it cannot stand legal scrutiny, if challenged before a superior court. The substantive Act does not undergo any amendment, still the Finance Act which has no right to interfere with the basis of assessment is given authority to control the basis, method and recovery of taxation.

In the Act of 1918, a separate chapter was introduced relating to the summary procedure for the assessment of incomes above Rs. 1000/-. As these incomes were exempt from tax when the Indian Income-tax Act of 1922 was enacted, these provisions were omitted. When however in 1931, 1932, the limit of exemption was once again lowered these provisions were revived and have been hitherto incorporated from year to year in the Finance Act—a parallel not to be found elsewhere.

The authorities having found their mistakes, attempts are now being made to insert section "39A" which provides for summary assessment.

The object is to introduce into the permanent Income-tax Law two sets of provisions relating to the details of assessment which have in the recent past been the subject from time to time of adhoc action which has taken the form either of the entries in the Finance Act of the year or of notifications under section 60 of the Income-tax Act, 1922. The desirability of incorporating provisions of this nature in the Income-tax Act itself rather than in the various Finance Acts is the only alternative.

Unfortunately the old practice of summary procedure for lower limit cases is to go on under the Finance Act; the result is that the much talked section 39(A) has not been given effect to.

INCOME AND CAPITAL.

The Act nowhere defines what "income" is. On a reference to the Oxford dictionary we find that "income" is a periodical receipt from one's work, business, lands or investments; whereas the New Standard dictionary says that "income" implies coming in to a person within a specified time and regularly from services, investment, etc.

The Privy Council in the case of *Commissioner of Income-tax, Bengal v. Shaw Wallace Co.* 136 I. C. 743, holds that the object of the Indian Income-tax Act is to tax "income", a term which it does not define. It is expanded, no doubt, into "income, profits or gains" but the expansion is more a matter of words than of substance. Income, their Lordships think, in this Act, connotes a periodical monetary return "a coming in" with some sort of regularity or expected regularity, from definite sources. The source is not necessarily one which is expected to be continuously productive of a definite return, excluding anything in the nature of a mere windfall. Thus income has been likened pictorially to fruits of a tree or the crops of a field. It is essentially the produce of something, which is often loosely spoken of as "capital". But capital, though possibly the source in the case of income from securities, is in most cases hardly more than an element in the process of production.

The term "income" when contrasted with "capital" means and includes not only income in its strict meaning, but also profits and gains. "Income" as contrasted not with capital but with profits or gains in the Income-tax Act means "a periodical monetary return coming in" and accruing to the assessee independently and not as the net proceeds of a business carried on by the assessee as defined in section 2(4) of the Act. Income in this sense connotes incomings with regard to out-

goings. On the other hand "profits" in this connection are the surplus by which the receipts from the trade or business exceed the expenditure, necessary for the purpose of earning these receipts.—*Commissioner of Income-tax—Burma v. Bengalee Urban Co-operative Society, Limited*, A. I. R. 1934, R. 27.

The Judicial Committee of the Privy Council, in the case of *Bijoy Sing Duduria*, 143 I. C. 145, has made a judicial pronouncement. The Raja succeeded to the family ancestral property on the death of his father. Subsequently the step-mother brought a suit in which a consent decree was passed by which a fixed monthly sum was sanctioned to the step-mother and declaring the maintenance allowance as "charge" on his state. The Calcutta High Court held that the payment did not fall under any of the exemptions; but the Privy Council reversed the decision holding that the amount is not income. Their Lordships observe: "when the Act by section 3 subjects to charge 'all income' of an individual, it is what reaches the individual as income which it is intended to charge. In the present case the decree of the Court by charging the appellant's whole resources with a specific payment to the step-mother has to that extent diverted his income from him and has directed it to his step-mother; to that extent what he receives for her is not income. It is not a case of the application by the appellant of part of his income in a particular way, it is rather the allocation of a sum out of his revenue before it became income in his hands."

ENGLISH AND INDIAN CASES OF "INCOME AND CAPITAL."

In *Hudson Bay Co.* 25 T. L. R. 709, 5 T. C. 424, it was held that lands sold by the company in lieu of prices do not constitute profits earned in course of business but amount to realisation of capital. In *Tebnan Rubber Syndicate v. Farmer*, 5 T. C. 658, a company was started to purchase lands and to develop the lands by rubber plantation. The said company purchased two estates and made plantations but in course of a year had to wind up the business. Subsequently the company sold the estates for cash and shares. As the company was not formed to deal in lands, it was held to be a case of appreciation of capital,

Ordinarily profits made in an isolated transaction are not taxable—*Virappa Chettiar*, A. I. R. 1930, Mad. 123. But where a money-lender takes lands in satisfaction of his debts and sells them at profits later on, profits are taxable income—*Chetiappa Chettiar*, A. I. R. 1930, Mad. 49.

Where a liquidator of a company distributes profits, so

long undistributed, such profits are not income—*Commissioner of Inland Revenue v. Burrell*, 9 T. C. 27.

But annual royalty for a copyright or patent right is “income”; but where such rights are sold outright for consideration, the consideration received is a capital receipt—*Chertis Brown Ltd. v. Jarvis*, 14 T. C. 744. A sum paid as royalty for the use of patent is not capital payment but is income—*In Re : Constantines*, 11 T. C. 730.

MUTUAL CONCERNS : BENEFIT SOCIETIES.

It is a recognised principle of law that a man cannot make a profit “out of himself” and it is for this reason that mutual profits are not chargeable to income-tax. Under this heading may be mentioned “dividends received from co-operative societies in respect of purchases” (but not in respect of shares), profits of mutual insurance associations and of clubs where the only income is received from members, who are at the same time proprietors.

The mutual benefit societies are formed with the express object of affording mutual help to the members of such societies. No portion of the income is taxable, mutuality being the essence. When the society is incorporated it does not become a separate legal entity—*New York Life Insurance Co. v. Styles*, 14 A. C. 389, *Jones v. Lancashire Coal Owners Association*, 1927 A. C. 827. Where the members of the club are identical with those of the company, the principle of mutuality will not be considered as being disturbed.

But when it carries business with outsiders, the essence of mutuality vanishes and the profits become taxable—*Last v. London Assurance Corporation*, 1885, 10 A. C. 438, *Equitable Life Assurance v. Bishop*, 1 Q. B. 177, *Liverpool Corn Trade Association v. Monks*, 2 K. B. 110 and *Dibrugarh District Club*, 55 Cal. 971.

Thus it is clear that income is what a person gets from another and not what he gets from himself—*In Re : Glasgow Corporation Water Commissioner v. Muller*, 2 T. C. 131, 141.

It has already been stated that in the case of *New York Life Assurance Co. v. Styles*, 14 A. C. 381, it was held that person contributing to a common fund for mutual insurance would not be regarded as carrying on business for the purpose of earning profits.

In the case of *Royal Calcutta Turf Club*, 48 Cal. 844, Justice Sanderson observes : “the income of a turf club consists of moneys paid by the public as (1) Entrance fees to the stand,

paddocks, and (2) Enclosure or entrance fees paid by owners of race horses, (3) Book-makers' license fees and (4) percentage on totalisations, besides moneys paid by ordinary membersIn my judgment, upon the facts submitted to the Court, it must be held that the Royal Calcutta Turf Club is carrying on an 'adventure' and concern, in the nature of trade and consequently carrying on a business within the meaning of the section 3 of the Act, in respect of sums received under the first 4 heads mentioned in the case, from persons other than members of the club."

The above was decided on the basis of the English case *Carlisle and Silloth Golf Club v. Smith*, 2 K. B. 177 which is quoted to some extent below.

"The Appellant, an ordinary member's golf Club acquired land under lease from a railway company and laid out a golf court and erected a club house thereon. In addition to the members of the club, who are entitled to payment of an annual subscription to play on the links and two other privileges for the current year, a considerable number of visitors were permitted to use the club premises and to play on the links, in accordance with a provision, contained in the lease which required the club to allow such visitors to play on payment of certain green fees. The total expenditure incurred by the club in maintaining the links in a proper condition for play, exceeded the total amount of fees received from visitors; it was held by the Court of Appeal that the appellants were carrying on an enterprise which was beyond the scope of ordinary functions of the club and as to which separate accounts might be kept, so as to ascertain whether there were any profits derived from green fees, and were therefore taxable under schedule D of the Income-tax Act".

The learned Master of the Rolls observes: "it seems to me that there is real difference between moneys received from members by the club and from strangers. I cannot draw any distinction between the gate moneys, which might be, I believe, sometime are, received by a Golf Club and green moneys; in each case the club would be assessable."

CLUBS AND SOCIETIES.

In the *United Service Club v. Crown*, 2 L. 119, the observations of Lord Macnaghten in the case of *New York Life Assurance Co. v. Styles*, 27 C. 460, were quoted thus: "I do not understand how persons contributing to a common fund in pursuance of a scheme for their mutual benefit, having dealings or relations with any outside body, cannot be said to have made a profit when they find that they have overcharged

themselves and their some portions of the contributions may be safely refunded”.

Justice Martineau observes : “I see no essential distinction between the case of such an association and that of a club whose members subscribe for their mutual benefit and I do not think that the money received by a club from the members composing it, can properly be regarded as income—a word which in itself seems to imply something received from outside.”

The Calcutta High Court in the case of *Dibrugarh District Club Limited*, 32 C. W. N. 691, came to the conclusion that the company was liable to tax on the profits inasmuch as, it was not a mutual trading society, making quasi profits, by trading with its own members and returning such profits to other members.

In *Mohiuddin Sahib*, 106 I. C., it was held that where a body of individuals worked and shared profits in toddy shop, such combined profits were liable to tax. In *Lucknow Ice Association*, 92 I. C. 257, it was held to be a separate entity liable to tax on its profits. Similar views were also expressed in the case of the Mahanaj Bag Club.—(*unreported*).

In *Trichinopoly Hindu Permanent Fund Limited*, 107 I. C. 291, the society was held not “mutual” and the entire profits were liable to assessment. The essence of mutuality was found lacking. But in *Mylapore Hindu Permanent Fund*, 1 I. T. C. 217, it was held that the income of the fund is derived from interest paid by borrowers to shareholders and from outsiders and is divided among shareholders. The interest paid by members is not liable to tax as it does not come from outside, but the interest received from outsiders is liable to tax.

LIFE ASSURANCE COMPANY.

Life Assurance Companies may or may not be mutual societies, even though the assured participate in profits, for the income is derived not from the share-holders but from other persons—*Equitable Life Assurance Society v. Bishop*, 1 Q. B. 177.

CHIT FUND.

In the *North Madras Mutual Benefit Co. Ltd.* 1 I. T. C. 172, a chit fund was conducted by the assessee as stake holder, where the amount received in the auction was distributed amongst the chit holders. It was held that the sums were not taxable.

An exhaustive list of associations cannot be given but the following associations are generally established for mutual

benefits *e. g.* Bar Associations, Trade Associations, Chamber of Commerce, etc.

TAXABLE PERSONS.

“Individual” has not been defined in the Act. The term includes within its purview, adults and minors even. An individual is not assessed on his income derived from the Hindu undivided family, because the income of the Hindu Joint family is excluded in computing the total income of the individual members under section 14(1). An individual is thus not liable to pay income-tax and super-tax upon any sum which he receives as a member of the Hindu undivided family ; nor is this sum taken into consideration in computing the total income, either for income-tax or for super-tax purposes, no matter whether the family is taxable or not. A corporation is an individual within the meaning of section 3—*Trustees of Sir Korimbhai Ibrahim Baronetcy*, A. I. R. 1932 Bombay 106.

HINDU UNDIVIDED FAMILY.

A Hindu undivided family is a group of persons, having a common ancestry, who owns properties or carries on business in common, sharing the profits jointly. There cannot be any specific apportionment of profits or losses to any member and no coparcener can claim any specific share.

Under the Dayabhag system of Hindu Law, father and son do not constitute a Hindu undivided family as the son has no interest in the property or in the trading concern during the life time of the father.

Under the Mitakshara school, a Hindu undivided family includes only those persons who have by birth an interest in undivided family. The interest of a co-parcener is a fluctuating interest, which can increase or decrease by deaths and births in the family—*Sudarsanam Ministry v. Narasingh*, 25 Mad. 149 ; so long the family remains undivided, no question of specific share can arise.

Division in a status can be effected by various ways, *e. g.*, by mutual agreement or by the expression of an unequivocal intention of separation. Whether there has been a separation or not is a question of fact, pure and simple, to be determined by the I. T. O.

Once an erstwhile coparcener express his desire to divide the family the status becomes divided either by act of parties or by an express declaration. A formal declaration by a member before the Income-tax Officer about the separation of the Hindu

undivided family is sufficient to effect a partition—*Jaharmal Ladhuran v. Harisingh*, 28 I C. 538. But separation in food, mess or worship does not tantamount to a separation of the family.

Under the Indian Income-tax Act 1922, a Hindu undivided family is regarded as a separate legal entity and individual coparcener of such family is not assessed in respect of his income from such family.

COMPANY.

“Company” means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent.

Company has got no taxable minimum as regards income-tax. The powers of a company are limited by the Articles of Association—*Liverpool and London Globe Insurance Co. v. Bennet*, 6 T. C. 327.

There is such a legal fiction as “one man company”, i.e., an individual who enjoys practically all the shares, while a small portion of shares are allotted to few others. When the small portion of shares allotted to others really belongs to the individual who in fact is in sole control having power to determine rights and liabilities, then he alone is liable to income-tax on the entire amount at the rate applicable to his individual income—*Dinshaw Maneckji Petit*, 51 Bombay 372. But if on the other hand the few others are quite independent of the individual, the microscopic shares of them, cannot affect the company being recognised as “company” in the real sense of the term.

A company that is wound up may not be assessable to income-tax—*Tebru v. Farmer*, 5. T. C. 658.

In *Agra Spinning and Weaving Mills Co. Ltd.* A.I. R. 1934 All. 170, it was held that a company in liquidation is a “company” within section 3 and the official liquidator of a company can be treated as its principal officer within the meaning of section 2 (12)

FIRM.

Firms are legal entities, distinct from company. Firm has been defined as in the Indian Contract Act, where it is defined thus: “persons who have entered into partnership with one another are called collectively a firm”

A firm may be registered or unregistered and the assessment must be made on the firm as a whole and not on the partners

thereof. For the purpose of computing profits for income-tax purposes, a firm is a distinct legal entity and is different from its members.

ASSOCIATION OF INDIVIDUALS.

The Act does not define it, but it is also a legal entity distinct from a company or a firm.

The term "other association of individuals" includes within its net, clubs, associations or unions. Where a body of individuals, working and sharing profit, in a certain toddy shop, makes some profit, it is chargeable u/s 3 as association of individuals—*In re: Mahiuddin Sahib*, 53 M. L. J. 719. Similarly a body of Trustees comes within the meaning of section 3, as association of individuals—*In re: Hoti Trust, Simla*, A. I. R. 1930 L. 929.

It has been held that under section 3, those who are liable for income-tax are also liable for super-tax—*In re: Trustees of Sir Karimbhai Ibrahim Baronetcy*, A. I. R. 1932 Bombay 106.

In the case of *Commissioner of Income-tax v. J. V. Saldhana*, 138 I. C. I, it has been held that the term association of individual in section 3, has no technical meaning. It merely means a group and when properties of a number of individuals are put together within the meaning of section 3, in such a case the whole group of individuals can be assessed through the person who carries on the business.

FOR ANY YEAR.

The Indian Income-Tax Act 1922, provides that tax can only be levied in respect of the Income of the "previous year" and not in respect of the "assessment year". Consequently it follows that where a person has no source of income in the year 1933—34 (previous year), he cannot be assessed in 1934—35; although he might have sources of income in that year. The underlying principle is to assess the income of the "previous year"—See the case of *Beharilal Mallick v. Commissioner of Income-tax, Bengal*, 2 I. T. C. 328.

The intention of section 3 is not to treat the income of the previous year merely as a measure of the unascertained income of the year of assessment, but to tax the assessee in the year of assessment upon the income received by him in the previous year—*In re: Beharilal Mallick* relied on; 54 Cal. 630, *In the matter of Telvigarahaval Estate* through Ram Prosad, principal officer, 147 I.C. 434.

MINIMUM INCOME.

It has been stated that the company has got no taxable minimum, whereas other taxable persons *e.g.* individuals, association of individuals or firms have got a taxable minimum—*Market Harborough Advertising Co.*, 5 I. C. 95 and *Old Mankind Conservative Association*, 5 T. C.

NON-RESIDENCE.

In the case of non-residence, income which neither accrues, nor arises, nor is received, within British India, may be liable to tax under the combined operations of sections 3, 4 and 42. Profits of a company outside British India on premiums of participating policies, collected and sent by its branch in India, by investment outside India are profits or gains which can be traced in India (relying on the case of *Rogers Pratt Shellac & Co.* 52 Cal. 1, *Messrs. Steel Brothers & Co. Ltd.* A. I. R. 1926 R. 97)—*In the matter of Commissioner of Income-tax Bombay v. National Mutual Association of Australasia.*

BONUS SHARES.

Where a company virtually makes a distribution to shareholders, under the guise of a loan or similar pretence, it may be held to be income for super-tax purposes in the hands of the recipient—*Jacob v. C. I. R.* 10 T. C. 1. Much depends on the particular circumstances of the case, as to whether the loan is genuine or not—*C. I. R. v. Samson*, 8 T. C. 20 and *Hall v. C. I. R.* 5 A. T. C. 154.

Many cases have been before the courts on the matter if whether bonus distributions by companies are income for the purposes of liability to super-tax. The decisions indicate that where the bonus is in some form other than cash *e.g.* shares, debentures etc., and there is no option to take it in cash, whether exercised or not, the amounts in question will not be liable to assessment to super-tax (see *C. I. R. v. Fishers' Executors* 42 T. L. R. 340, *Whitmore v. C. I. R.* 5 A. T. C. 1, *C. I. R. v. Wright*, 5 A. T. C. 525, and *In re : Bates*, Ch (1928) L. J. N. 456).

These decisions do not apply where the bonus takes the form of the distribution of the stock etc. in another company—*Pool v. Guardian Investment Trust*, 8 T. C. 167 or where a dividend is returned to a company in payment for shares—*Roe v. C. I. R.*, 8 T. C. 613.

A surplus on liquidation, even when consisting largely of accumulated profits is not income for the purposes of super-tax in the hands of the share-holders—*C. I. R. v. Burrell*, 9 T. C.

27. This would not apply, however, to current trading profits distributed by a liquidator.

A dividend paid without deduction of tax out of funds which are not liable to assessment to income-tax will not be liable to super-tax in the hands of the recipients—*Gimson v. C. I. R.*, 9 A. T. C. 170.

Where dividends or interest are declared after the sale of shares or other securities, the whole dividend, including any arrears from previous years, is regarded as income, in the hands of the transferee—*C. I. R. v. Forest*, 8 T. C. 704, *Wigmore v. Summerson*, 9 T. C. 577, *C. I. R. v. Oakley*, 9 T. C. 582 and *In re : Leigh*, 6 A. T. C. 514. (*Trustees of the Estate of the late Sir David Yule.*)

To give a detailed idea about dividends converted into bonus shares or debentures, I propose to deal with the Calcutta High Court cases in details, touching the other connected cases along with it.

The Commissioner of Income-tax, Bengal made a reference u/s 66(1) to the High Court at Calcutta to the effect whether the issue of debentures by way of bonus, constituted "income" for the purposes of super-tax u/s 55.

The Calcutta High Court negatived the reference holding that the issue of such debentures by way of bonus does not constitute income for the purposes of super-tax.

SWAN BREWERY CASE.

It was a decision on an Act known as Dividend Duties Act of Western Australia which, to put it shortly, taxed dividends and contained a definition of "dividends" including within it every profit, advantage or gains intended to be paid or credited to or distributed among any member of any company. Admittedly a distribution of a bonus share is an advantage and necessarily the Privy Council had no other alternative than to hold that it was a dividend within the meaning of the Act. It is clear that a shareholder in the above case was receiving bonus shares which were an advantage within the meaning of a highly artificial definition of the word "dividend" in a colonial Act notwithstanding that his proportionate share remained the same after the transaction as it had been before.—30 T. L. R. 199.

BLOTT'S CASE.—1921 A. C. 171.

In the above case, the decision of Swan Brewery Case was discussed threadbare by the House of Lords and it was held that the decision in the Swan Brewery Case turned upon the

meaning of local statutes and it was a decision upon a particular Act and is not of general application.

FISHER'S EXECUTORS—10 T. C. 302.

The above case stands rather on the same footing with Blott's case. It was a case where a limited company capitalized a part of its undistributed profits by issuing debentures of stock in satisfaction of such bonus, there being no option on the part of the share-holders to receive such bonus in cash. It was held that the bonus paid was not a distribution of profits and did not constitute income in the hands of the assessee.

TRUSTEES OF THE ESTATE OF THE LATE SIR DAVID YULE.

Where in a meeting share-holders of a company desire to capitalize a part of the amount standing to the credit of the reserve fund by declaring a special capital bonus by issue of debentures; it has been held that the point submitted before the High Court is completely covered by the decision in *Fisher's Executors*, 10 T. C. 302 and that the issue of debentures by way of bonus does not constitute income in the hands for the purposes of super-tax.

The Calcutta High Court approved the decision of the Madras Case of *Binny & Co.*, 82 I.C. 682, and relied on the definition of "income" as enunciated by their Lordships of the Privy Council in the case of *Commissioner of Income-tax, Bengal Vs. Shaw Wallace & Co.*, 136 I. C. 743. I may be permitted to add that the Privy Council case of *Raja Bijoy Singh Duduria* 6 I. T. C. 450 is also to the point. When the Act by section 3 subjects to charge "all income" of an individual, it is what reaches the individual as income which it is intended to charge and necessarily the issue of bonus shares by way of debentures is not income.

I may be permitted to quote in some length the following observations in the case of *Fisher's Executors*.

"My Lords, the highest authorities have always recognised that the subject is entitled to arrange his affairs as not to attract taxes imposed by the Crown, so far as he can do so within the law, and that he may legitimately claim that advantage of any express terms or of any omissions that he can find in his favour in taxing Acts. In so doing, he neither comes under liability nor incurs blame. It may be a question, however, whether these considerations of justice and public policy apply equally to a limited liability company, a creature of the law strictly controlled by statute, in a case where it has no interest in either payment of or escape from a tax that is not levied on it."

· CONVERSION OF DIVIDEND WHEN YIELDS INCOME.

1. Conversion of dividend is income if received in cash.
2. Conversion of dividends as shares or debentures of the same company is capital.

The Companies Act makes a special provision by which a company can increase its capital by issuing bonus shares or debentures the shareholders getting draft on the capital of the company alone ; it is a thing in the nature of an extra share certificate in the company. The company has power to do what it pleases with any profits which it may make. It can choose whether it will divide its profits in meal or in malt ; provided the company violates no statute and also keeps within its Articles of association.

4. (1) Save as hereinafter provided, this Act shall
Application of Act. apply to all income, profits or gains,
as described or comprised in section
6, from whatever source derived, accruing or arising, or
received in British India, or deemed under the provisions
of this Act to accrue, or arise, or to be received in
British India.

(2) *Income, profits and gains accruing or arising without British India to a person resident in British India shall, if they are received in or brought into British India, be deemed to have accrued or arisen in British India and to be income, profits and gains of the year in which they are so received or brought, notwithstanding the fact that they did not so accrue or arise in that year.*

Provided that nothing contained in this sub-section shall apply to any income, profits or gains so accruing or arising prior to the 1st day of April 1933, unless they are income, profits or gains of a business and are received in or brought into British India within three years of the end of the year in which they accrued or arose :

Provided further that nothing in this sub-section

shall apply to income from agriculture arising or accruing in a State in India from land for which any annual payment in money or in kind is made to the State.

Explanation.—Income, profits or gains accruing or arising without British India shall not be deemed to be received or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in the balance sheet prepared in British India.

(3) This Act shall not apply to the following classes of income :—

- (i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.
- (ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.
- (iii) The income of local authorities.
- (iv) Interest on securities which are held by, or are the property of, any Provident Fund to which the Provident Funds Act, 1897, applies.
- (v) Any capital sum received in commutation of the whole or a portion of a pension, or in the nature of consolidated compensation for death or injuries, or in payment of any insurance policy, or as the accumulated balance at the credit of a subscriber to any such Provident Fund.
- (vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the

performance of the duties of an office or employment of profit.

(vii) Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employee.

(viii) Agricultural Income.

(ix) Any income received by trustees on behalf of a recognised provident fund as defined in clause (a) of section 58A.

In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

NOTES.

"Statement of Objects and Reasons of the New Amendment

Under section 4(2) of the Indian Income-tax Act (XI of 1922) income derived from sources abroad by a resident in British India is liable to Income-tax in British India only if (a) it is derived from *business* and (b) it is received in or brought into British India within three years from the end of the year within which it accrued, arose or was received abroad.

2. There seems to be no logical ground for not treating other classes of foreign income of a resident in British India (for example, income from investments abroad) on the same footing as income from business, nor does there seem to be any valid reason why foreign income should not be liable to tax *whenever* it is received in or brought into British India.

3. It is therefore proposed to amend the section in question so as to render *all* foreign income of a resident in British India from *whatever* source received, liable to income-tax in British India, *whenever* it is received in or brought into British India.

Simla, the 16th June 1932.

A. A. L. Parsons"

WHEN INCOME EARNED OUTSIDE BRITISH INDIA IS TAXABLE.

Section 4(1):—The act applies to all income from whatever source it is derived if it accrues or arises or is received in

British India, or is, under the provisions of the Act, deemed to accrue or arise or to be received in British India. The tax is, therefore, payable on all income arising or accruing in British India whether the recipient resides in British India or not (*see* case No. 5 in Volume II). The tax is also payable in respect of income received by a resident in British India irrespective of whether it accrued or arose within or without British India. Tax is also payable in respect of income which is "deemed under the provisions of this Act to accrue or arise or to be received in British India". The particular cases where income is "deemed under the Act to accrue or arise or to be received in British India", are specified in section 4(2), section 7(2), section 11(3), and section 42.

Section 4(2) was inserted in the present Act owing to the tax having previously been evaded in the case of income accruing or arising out of British India and received in British India by bringing in the said income at intervals and claiming that as such income was not received in British India in the year in which it arose or accrued out of British India, it was, when brought into British India, not income but accumulated profits or savings or capital. The sub-section is restricted in its application to the case of business profits or gains and provides with respect to such profits or gains that they shall be deemed to be profits and gains of the year in which they are received or brought into British India notwithstanding that they did not accrue or arise in that year, provided that they are so received or brought in within three years of the end of the year in which they accrued or arose. The provision relates, of course, merely to income, profits or gains, and not to the importation of capital; it provides for the inclusion in the assessable income, profits or gains of the year in which it was received or brought into British India, of business profits or gains accruing or arising within the previous three years which would, apart from the provision of this sub-section, have been taxable had they been brought into British India in the year in which they arose or accrued.

(2) *Taxation of foreign incomes*:—Section 4 (2) was inserted in the present Act owing to the tax having previously been evaded in the case of income accruing or arising out of British India by bringing in the said income at intervals and claiming that as such income was not received in British India in the year in which it accrued or arose out of British India, it was, when brought into British India, not income but accumulated profits or savings or capital. The sub-section applies to all incomes, profits and gains accruing or arising outside British India to a person resident in British India and provides with respect to such income, profits and gains that they shall be

deemed to be income, profits and gains of the year in which they are received or brought into British India notwithstanding that they did not accrue or arise in that year. The provision, of course, merely relates to income, profits and gains and not to the importation of capital. It does not apply to income, profits and gains which accrued or arose before the 1st day of April 1933, on which day the sub-section in its present form came into force. Income, profits or gains which accrued before the 1st day of April 1933 will be liable only if *they are income, profits and gains of a business* and are received in or brought into British India within 3 years of the end of the year in which they accrued or arose. Income, from agriculture arising or accruing in an Indian State from land for which any annual payment in money or in kind is made to the State is also not liable under this sub-section.

In the Madras High Court Case No. 4 of 1919, Board of Revenue, Madras, *versus* Ramanadhan Chetty (I, Srinivasan Tax Cases, page 37), it has been held that profits derived from business carried on outside British India by persons resident in British India are not liable to assessment under the Act if the profits are not remitted to British India. The assessee in this case who resided in British India was a proprietor of a money-lending business carried on by his agents in various places outside British India. The only part taken by the proprietor in the business was to acquaint himself with the state of business abroad and occasionally to issue general instructions, and it was not disputed that none of the income accruing abroad had ever been transmitted to him in India.

In the Bengal High Court Case No. 56 of 1921, Bengal Nagpur Railway Company, Ltd., *versus* Secretary of State for India (I, Srinivasan Tax Cases, page 178), it has been held that the Bengal Nagpur Railway Company is not liable to pay tax on the interest guaranteed by the Secretary of State. This ruling should be followed in the case of all Railway Companies where the interest is guaranteed by the Secretary of State and is paid in England only. It does not apply to cases where the interest is guaranteed by an authority other than the Secretary of State or is paid in India.

Is interest on the sterling securities of the Government of India or on the sterling securities issued by English companies carrying on business in British India liable to Indian income-tax?—Where such interest is received by the debenture or security holder in British India, it is clearly liable to Indian income-tax under section 4(1); where, however, it is not received in British India, the tax will only be payable under the terms of the same section if the interest can be held to accrue or arise there. “Accrue or arise” as used in this con-

nection are general words descriptive of a right to receive, and in this view the relevant portion of section 4 (1) of the Act may be paraphrased by stating that the income to which the Act applies is income received in British India or income which there is a right to receive in British India. If this test is applied, interest on the sterling securities of the Government of India, if not received in British India, will not be chargeable with Indian income-tax; and similarly the interest on sterling debentures issued by companies will not be chargeable if, as is usually the case, there is a right to receive it in England. For the purpose of the test it is immaterial in what currency the security or loan and its interest is expressed, and consequently the same principle is also applicable in determining the liability to Indian income-tax of the interest on foreign (other than sterling) debentures. On the other hand, interest on promissory notes of the Government of India enforced for payment in England is liable to Indian income-tax, since here the right to receive payment of interest is a right to receive it in India, and the concession by which Government paper can be enforced for payment of interest in London does not constitute any part of the actual contract entered into by Government.

Exemptions—Incomes excluded from “total income”:—In addition to the exemptions mentioned in section 4 (3), the following further exemptions have been made by the Governor General in Council in exercise of the powers conferred by section 60 of the Act.

The following classes of income shall be exempt from the tax payable under the said Act and they shall not be taken into account in determining the total income of an assessee for the purposes of the said Act:—

(1) The official allowance which an agent of a Prince or State in India, who has been duly accredited to represent the Prince or State for political purposes in any place within the limits of British India, receives as such agent in British India from the Prince or State; and the official salaries and fees received in India from their Government by foreign Consuls, whether *de carriere* or not and whether foreign or British subjects, and by Representatives and Consular employees (whether foreign or British subjects) who are members of a permanent consular service.

(The latter portion of this exemption applies only to salaries and fees received from their Governments and not to any other income, profits or gains, accruing or arising to them or received by them in British India).

(2) The salary and allowances paid by a State in India

during the period of deputation to any person deputed by the State for training in British India.

(3) Scholarships granted to meet the cost of education.

(4) Such portion of the income of a member of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Royal Indian Marine as is compulsorily deducted from his salary by the orders, or with the approval of Government for payment to a mess, wine or band fund.

(5) The allowances attached to—

The Victoria Cross ;

The Military Cross ;

The order of British India ;

The Indian Order of merit.

The King's police medal.

The Indian police medal.

(5A) The interest on Govt. securities held by or on behalf of Ruling chief and princes of India as their private property.

(6) 'Jangi Inams' awarded to Indian officers. Indian other ranks and followers in respect of services in the Great war.

(7) The yield of Post Office cash certificates.

(8) The interest on deposits in the Post Office Savings Bank.

(9) The income of a University or other educational institution existing solely for educational purposes and not for purposes of profit.

(10) The salary of His Majesty's Trade Commissioner in India.

(11) The salary of the Canadian Trade Commissioner in India at Calcutta.

(12) The salary of the Trade Commissioner in India of the United States of America, and of any members of his staff who are citizens of the U. S. A. and have been detained for duty with the said Trade Commissioner by the Government of the said States.

(13) The salaries of the correspondent of the International labour office, New Delhi and his staff.

(13A) The salaries of the organiser and manager of the Branch office of the League of Nations, Bombay and his staff.

(13B) The salaries of Khasdars and levies employed in the tribal territory or the N. W. F. and of all persons employed in the tribal levy service in Baluchistan.

(14) The gratuities which are granted to officers and others

in respect of wounds or injuries received either in action or in the performance of duty otherwise than in action in His Majesty's Naval, Military or Air forces, British or Indian or in the Auxiliary Force, India, or in the Indian Territorial Force or in the Royal Indian Marine.

(15) The gratuities which are granted to the widows, children or other relatives of officers and others who are killed in action or suffer violent death due directly or wholly to war service, or are killed or die of injuries sustained on flying duty or while being carried on duty in air craft under proper authority, or die within seven years from wounds or injuries so received.

(16) Retiring gratuities with increments thereto granted under the rules framed by the Secretary of State in Council in pursuance of the Royal Warrant dated the 25th April 1922.

(17) Gratuities sanctioned under Army Instruction (India) No. 223, dated the 21st March, 1922, for regular Royal Engineer Officers on the Indian establishment belonging to the Survey or Railway Department and regular Indian Army Officers of the Survey Department.

(18) Gratuities granted to Assistant Surgeons of the Indian Medical Department in Military employment declared surplus to establishment under Army Instruction (India) No. 516 of 1924.

(19) Gratuities which are granted by the Railway Board or under general order issued by the Railway Board to employees on their retirement or discharge from service or in the event of their death while in service, to their widows or children or other members of their families.

(20) Extraordinary gratuities which are granted by Government or by Railway Administrations to Government or Railway servants (or to their widows, children or other representatives, as the case may be) who are injured or killed in the execution of their duties or who suffer injury or death owing to devotion to duty.

(20A) Gratuities granted to the staff of the Indo-European Telegraph Dept. in pursuance of the resolution of the Secretary of State for India in council dated the 24th June 1930.

(20B) Gratuities granted under paragraph 6 of Army Instruction (India) No. 101 dated the 9th September 1930.

(21) The allowance or salary paid in the United Kingdom to officers of Government on leave or on duty in that country whether such allowance or salary is paid in sterling in the United Kingdom or by means of negotiable rupee drafts on a bank in India.

(22) The leave allowance or salary drawn from any Colonial Treasury by officers of Government on leave or on duty in the Colony.

(23) Leave salaries or leave allowance paid in the United Kingdom or in a Colony, to officers of local authorities, or to the employees of Companies, or of private employers on leave in the United Kingdom or in such Colony.

(24) Vacation salaries paid in the United Kingdom or in a Colony to Judges of High Court or of Chief Courts, to Judicial Commissioners, or to other officers of Government, when on vacation therein.

(25) The pensions of officers of Government residing out of India drawn from any Colonial Treasury or paid in the United Kingdom, whether such pensions are paid in sterling or by means of negotiable rupee drafts on a bank in India.

(26) The salaries of the light house keepers of light houses in the Red Sea.

(27) The pensions paid in the United Kingdom, or in a Colony to officers of local authorities or employees of companies or of private employers, such officers or employees being resident of India.

(28) The interest on Mysore Durbar Securities.

(29) Pensions granted to officers of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Auxiliary Force, India, or of the Indian Territorial Force, or of the Royal Indian Marine in respect of wounds or injuries received in action or in the performance of their duties as members of such forces otherwise than in action.

(30) Pensions granted to members of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Auxiliary Force, India, or of the Indian Territorial Force, or of the Royal Indian Marine, who have been invalidated from service with such forces on account of bodily disability attributable to, or aggravated by, such service.

(31) Value of rations issued in kind or money allowances paid in lieu thereof, to any officer or other rank in His Majesty's Naval, Military or Air Forces, British or Indian, or in the Auxiliary Force, India, or in the Indian Territorial Force, or in the Royal Indian Marine ; and

(32) Value of rent-free quarters occupied by, or money allowance paid in lieu thereof to Indian officers, British Warrant and non-commissioned officers and men of His Majesty's Military or Air Forces, and British and Indian Warrant officers of His Majesty's Naval and Marine Forces ; in all cases irrespective of whether the individual concerned is married or single.

(33) Conservancy allowance granted in lieu of free conservancy to non-departmental Warrant and non-commissioned officers of the Indian Unattached List, departmental non-commissioned officers of the Indian unattached list not in receipt of consolidated rates of pay and Warrant and non-commissioned officers of the permanent staff of the Auxiliary and Territorial forces.

(34) The value of the free education provided for the children of British Warrant and non-commissioned officers and any grants-in-aid made to British Warrant and non-commissioned officers in lieu of the provision of free education for their children.

(35) The income of persons, other than persons in the service of the Government, residing in the district of Angul.

(36) The perquisite represented by the right of any of the officers specified in the annexed list to occupy free of rent as a place of residence any premises provided by Government.

LIST OF OFFICERS.

The Governor-General,

The Commander-in-Chief,

The Governor of a Governor's Province,

The Chief Commissioner of any of the following Provinces,
namely :—

British Baluchistan,

Delhi,

Ajmer-Merwara,

Coorg,

and the Andaman and Nicobar Islands ; and any first class Resident in the Political Department.

(37) Such part of income in respect of which tax is payable under the head "Property" as is equal to the amount of rent payable, but not paid by a tenant of the assessee, where

- (a) the tenancy is *bona fide* ;
- (b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property ;
- (c) the defaulting tenant is not in occupation of other property of the assessee ; and
- (d) the assessee has taken all responsible steps to institute legal proceedings for the recovery of the unpaid rent.

(38) lump grants made by Government to the Indian Church—

- (1) for the provision of episcopal supervision and ministrations ;
- (2) for the payment of allowances to clergymen entertained in lieu of Chaplaincies reduced ; and
- (3) in lieu of the grants-in-aid at present given for the entertainment of clergymen of the Additional Clergy Society under Articles 602 and 603 of the Civil Service Regulations.

The following classes of income shall be exempt from the tax payable under the said Act, but shall be taken into account in determining the total income of an assessee for the purposes of the said Act :—

(1) The interest on Government securities purchased through the Post Office and held in the custody of the Accountant-General, Posts and Telegraphs.

(2) Sums received by an assessee on account of salary, bonus, commission or other remuneration for services rendered, or in lieu of interest on money advanced, to a person for the purposes of his business, where such sums have been paid out of, or determined with reference to, the profits of such business, and, by reason of such mode of payment or determination, have not been allowed as a deduction but have been included in the profits of the business on which income-tax has been assessed and charged under the head "business" :

Provided that such sums shall not be exempt from the payment of super-tax unless they are paid to the assessee by a person other than a company and have already been assessed to super-tax.

(3) The profits of any Co-operative Society other than the Sanikatta Salt-owners Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act, 1912 (II of 1912), the Bombay Co-operative Societies Act, 1925 (Bombay Act VII of 1925), or the Burma Co-operative Societies Act, 1927 (Burma Act VI of 1927) or the dividends or other payments received by the members of any such Society on account of profits.

The exemption which extends both to income-tax and super-tax applied only to "profits" in the strict sense of the word as used in the Act and does not include "income" derived by Co-operative Societies from interest on securities or dividends. The Societies whose income liable to income-tax is not taxable at the maximum rate or who have no income

liable to tax should apply to the income-tax Officer concerned for the issue of exemption certificates authorising persons paying interest on securities not to deduct any tax at source or to deduct tax at a lower rate than the maximum, as the case may be. Where a Co-operative Society incurs a loss under any head of income that has been exempted under tax by Notification u/s. 60(1) of Act, such loss may be set off u/s. 24 against any income that is not so exempted.

(4) Such part of the profits or gains of a firm which has discontinued its business, profession or vocation as is proportionate to the share of an assessee in the firm at the time of such discontinuance, if tax has any time been charged on such business, profession or vocation under the Indian Income-tax Act, 1918 (VII of 1918), or if an assessment has been made on the firm in respect of such profits or gains under sub-section (1) of section 25 of the Indian Income-tax Act, 1922 (XI of 1922).

Apart from the particular cases of Co-operative Societies and of Government securities purchased through the Post Office, and held in the custody of the Accountant-General, Posts and Telegraphs, the income or portions of incomes exempt under section 4 of the Act and under the orders of the Governor-General in Council under section 60 of the Act referred to above are not only not subject to income-tax or super-tax, but they are also not to be taken into account in determining the rate of tax on other income; they are excluded from consideration altogether. (I. T. Manual.)

ALLOWANCES IN ASSESSING PROFITS FOR RAILWAY OR TRAMWAY BUSINESS.

The following modification has been made in respect of income-tax in favour of income derived from railway or tramway business (other than an electric tramway):—

An assessee deriving income from a railway or tramway business may at his option require that in computing the profits or gains of such business the following allowances shall be made in lieu of the allowances specified in clauses (v), (vi) and (vii) of sub-section (2) of section 10 of the said Act, namely, the actual expenditure incurred by the assessee during the previous year on repairs, replacements and renewals of plant, machinery, buildings and furniture which are the property of the assessee:

Provided that an assessee who in any year has exercised the option hereinbefore conferred shall not be entitled save with the consent of the Commissioner

of Income-tax to withdraw that option in any subsequent year :

Provided further that nothing in this notification shall apply to an electric tramway. (Para 18 of I. T. M.)

Exemption of income derived from property held under a religious or charitable trust.—Under section 4 (3) (i) income derived from property which is held under a purely religious or charitable trust or under any other legal obligation, that it should be utilised for religious or charitable purposes is exempt. The word 'property' in this section does not bear the restricted meaning that it bears in section 9 of the Act but includes securities, a business, or share in a business.

Section 4 (3) (i) exempts two categories of income. First, income from property which is dedicated absolutely and secondly, in case of qualified dedication, so much of the income as is applied or finally set apart for application to religious or charitable purposes.

In the case of absolute dedication, *i.e.*, where there is no outstanding secular interest reserved by the trust, the exemption is complete. In the case of qualified dedication, the trust reserves a secular interest to beneficiaries, Shebait or heirs of the founder, etc. This secular interest is assessable to income-tax. Suppose 60 per cent. is under the trust applicable to religious or charitable purposes and 40 per cent. distributable among the heirs of the settlor. The 40 per cent. is assessable. Suppose also that only 50 per cent. is actually applied or set apart for religious or charitable purposes and the heirs or the shebait misappropriate 10 per cent. The 10 per cent. is under the section also assessable.

The maintenance of a shebait may or may not come within the category of religious or charitable purpose. It depends on the circumstances of the case. If, for instance, a dedication is absolute and a small portion of the income is given to the shebait for his remuneration for carrying out the trusts of the endowment, it would not be secular. If, on the other hand, a fixed sum is given to religious or charitable purposes and the residue of the income is given to the shebait for his maintenance, the residue would be held to be secular.

The test is whether a suit for partition lies for division of the residue. If it does, then the residue is secular and assessable. In such case, any portion of the dedicated, *i.e.*, ordinarily exempted income which may be misappropriated would also be assessable.

Section 4 (3) (ii) similarly exempts the income of religious

or charitable institutions which is derived from voluntary contributions and is applicable solely to religious or charitable purposes.

To secure exemption under clause (i) or clause (ii) of section 4 (3) the income of religious or charitable institutions and income derived from property held for religious or charitable purposes need not be actually spent on religious or charitable purposes *in the year of receipt*. It is sufficient if it is set aside for those purposes. In the case of *mixed* trusts, the income-tax authorities are required to enquire into the application of the income. Where property is held in part only for religious or charitable purposes a proportionate share of any expenses incurred on management should be considered as applied to those purposes.

To remove doubts regarding the application of these two clauses, read with the definition of "charitable purposes," to universities and other educational institutions the special exemption under section 60 of the Act mentioned in paragraph 17 (9) was made.

Attention is also invited to the exemption mentioned in paragraph 17 (3) of scholarships granted to meet the cost of education in the hands of the recipients of the scholarships.

Exemption of incomes of Local Authorities. [Section 4 (3) (iii).]—A "Local Authority" is defined in section 3 (28) of the General Clauses Act as a "municipal committee, District Board, etc., legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund". The words "legally entitled to or entrusted by the Government with" should be construed to mean "entitled by the law of British India to or entrusted by a Government authority in British India with." It follows therefore that there can be no "local authority" outside British India within the meaning of clause (iii) of sub-section (3) of section 4 of the Income-tax Act. This view does not of course apply to local authorities in British administered areas in Indian States to which the Income-tax Act and the General Clauses Act have been applied.

Exemptions of Provident Funds. [Sections 4 (3) (iv) and 4 (3) (v).]—Under section 4 (3) (iv), the interest on securities held by Provident Funds to which the Provident Funds Act, 1897 (now Act XIX of 1925), applies, is exempt from tax. Similarly under section 4 (3) (v), capital sums paid as accumulated balances at the credit of subscribers to *such* funds are exempt from tax and are not included in computing their "total income". The words "accumulated balance" include not only

contributions but also interest thereon. Under section 15 (1), contributions paid by a subscriber to such funds are also exempt from income-tax to the extent mentioned in section 15 (3). Contributions by *employers* to such funds stand on a totally different footing and are dealt with in paragraph 49. For special privileges for "recognised" provident funds see paragraph 20-A *et seq.*

The exemptions granted to Provident Insurance Societies which comply with the provisions of the Provident Insurance Societies Act, 1912, or which have been exempted from its provisions, were withdrawn by the Income-tax (Amendment) Act, 1924 (XI of 1924). Provident Insurance Societies to which the Provident Insurance Societies Act applies, or which have been exempted from its provisions and which were in existence before 1st April 1924 will continue to enjoy the exemptions under sections 4 (3) (iv) and (v) and section 15 (1) to which they were entitled under Act XI of 1922 before it was amended by Act XI of 1924. These concessions cannot be claimed by any other Provident Insurance Societies.

A special exemption has been granted [see paragraph 17 (19)] in respect of gratuities paid out of Railway Provident Funds on the retirement or death of the members.

MEANING OF THE WORD "SECURITIES" AS USED IN SECTION 4 (3) (iv)

The definition of the phrase "interest on securities" in section 8 of the Act, should not be applied to determine the interpretation to be given to these words in section 4 (3) (iv) since the words as used in section 8 are in a specially restricted sense and do not cover, for example, interest on so typical a form of security as a mortgage. Nor should the meaning of the word "securities" in section 4 (3) (iv) be restricted to the ordinary limited legal sense in which it must always have reference to a loan. Provident Funds are entitled to invest in any trustee security, and it has not been the intention of Government to discriminate between the various classes of investments which are thus legally authorised. The word "securities" in section 4 (3) (iv) should therefore be interpreted as covering all securities mentioned in section 20 of the Indian Trusts Act. (I. T. Manual).

PERQUISITES OR BENEFITS NOT CAPABLE OF CONVERSION INTO MONEY.

The provision in section 3 (2) (ix) of the Act of 1918 that "any perquisite or benefit which is neither money nor reason-

ably capable of being converted into money" was not liable to tax, has been omitted in the Act, as the existence of that provision made it impossible to assess to income-tax, rent-free residences in cases where the assessee had not the power to sub-let, while rent-free-residence were liable to the tax where the assessee had the power to sub-let. An explanation had been added to section 7 (1) of the Act specifically providing for the taxation of perquisites in the form of rent-free residences.

Under section 7 (1) of the Act, all perquisites received by an employee in lieu of or in addition to salary or wages are liable to the tax. House-rent allowances and the value of rent-free quarters form additions to the remuneration of an employee; and even where residence in a particular town or building is necessary for the proper performance of the employee's duties, such allowances or perquisites cover expenses of a personal character which the employee would otherwise have to incur. They do not therefore "meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit" and are therefore not covered by the exemption in section 4 (3) (vi) of the Act and are taxable under section 7 or section 12.

Two conditions have to be fulfilled before the exemption specified in section 4(3) (vi) can apply. The expenses incurred in the performance of his duties as an employee; and the allowances or perquisites must have been granted by the employer with the set purpose of meeting the extra expense thus caused to the employee, and that extra expense only. It is thus a question of fact in each case whether house-rent allowance or the value of rent-free quarters is exempt from the tax, but the following examples will serve to indicate the lines on which the decision should be made :—

- (a) A Currency Officer is granted rent-free quarters in his Currency Office. Even though his residence in that office is necessary for the proper performance of his duties, he will be liable to the tax on the value of his rent-free quarters, since he would in any case have had to provide himself with a residence and the perquisite does not therefore meet expenses wholly incurred in the performance of the duties of an office or employment of profit.
- (b) A firm in Calcutta makes a practice of providing its employees with rent-free quarters, and houses some of its employees in its business premises as

resident clerks. The employees of the firm including the resident clerks, will, as in the previous case, be liable to income-tax on the value of their rent-free quarters.

- (c) A Government office has its headquarters in Bombay, but proceeds for some months in the year elsewhere, and grants its ministerial establishment house-rent allowance or rent-free quarters in the place to which it proceeds with the specific object of providing for the maintenance of a second and, from the point of view of the grantees, unnecessary residence in order that they may perform their duties there. The allowance or the value of rent-free quarters will be exempt from income-tax.

In all cases where rent-free houses form part of the perquisites of an employee, the cash value of such a house to the occupier should, in no case, be deemed to be more than 10 per cent. of the salary of the employee. Where an employee is provided with rent-free furnished quarters, no attempt should be made to split the value of this perquisite into its component elements, *i.e.* rent-free quarters and rent free furniture. The maximum of 10 per cent. of salary should be applied to the perquisite as a whole.

Such perquisites as (for example) tiffin, domestic services or the value of passages by rail or steamer provided by employers free of charge for their employees are not taxable because they are not convertible into money and there is no special provision in the Act in regard to them as there is in regard to rent free quarters, but passage money paid in India by an employer to his employee to enable him to go on leave is liable to tax. If however, passage money is remitted by the employer to the United Kingdom or a Colony and paid there to an employee, on leave in such country, it should be regarded as a leave allowance covered by the exemption (23) in paragraph 17.

"The Delhi moving allowance" and "the Delhi Camp allowance" which are granted to the members of the office establishment of the Army Headquarters and of certain Civil attached offices of the Government of India during the period of their stay at Delhi and the Simla House Rent Allowance granted under Rule 9 of the Simla Allowances Code and the value of rent-free quarters in lieu thereof fall under example (c) above and are exempt from the payment of income-tax. Special allowances granted solely to meet the higher cost of living in a station such as Compensatory local allowances and the

Cutch exchange compensation allowance are liable to the payment of tax.

Rewards granted to officials for passing compulsory examinations must be distinguished from grants made to assist candidates to meet the expenses of preparing for such examinations. Such tuition rents fall under section 4(3) (vi) of the Indian Income-tax Act (XI of 1922) and are not liable to tax even if they are only paid to successful candidates. For example sums of Rs. 150 and Rs. 200 paid to military officers who have passed the Urdu qualifying and Preliminary Urdu examination respectively are tuition grants—not rewards—and are therefore not liable to income-tax (*see* also paragraph 25.)

In addition to the classes or portions of “salaries” drawn by officers and other ranks of the Army in India (British and Indian) mentioned in paragraphs 17 and 22, the following allowances are not liable to income-tax :—

Messing allowance ;

Syce allowance ;

Forage allowance ;

Detention allowance ;

Meal Money ;

Quarterly kit and clothing allowance ;

Outfit allowance ;

Tentage allowance whether separate or included in pay ;

Horse allowance ;

Travelling and conveyance allowances ; and

Any capital sum received in commutation of the whole or a portion of pension or in nature of consolidated compensation for death or injuries or in payment of any Insurance Policy or as the accumulated balance at the credit of a subscriber to any such Provident Fund.

The emoluments drawn by the officers and other ranks of the Army which are liable to income-tax are :—

1. Regimental pay, Command or charge allowance, Staff pay, P. S. C. pay and Separation allowance.

2. Ordnance pay.

3. Corps or Engineer pay, Batta or Field allowance.

4. Lodging allowance.

5. Value of rent-free quarters (officers).

6. Service or proficiency pay.

7. Extra duty pay.
8. Gratuities under Pay and Allowance Regulations. [paragraph 137 (1).]
9. Annuities under Pay and Allowances Regulations. [paragraphs 137 (II).]
10. Bounty money.
11. Pension drawn in conjunction with pay.
12. Separation Allowance.
13. Furniture Allowance.
14. Pensions (except wound of disability) paid in India to British and Indian Officers and men, their widows, children and dependants.

15. Half-yearly gratuity paid to temporary nursing sisters.

The Marriage allowance is not taxable if paid to the wife of a soldier unless the total income of the wife including the allowance exceeds the minimum taxable limit. Similarly, Maternity benefit is liable only if the total income of the soldier's wife including the benefit exceeds the minimum taxable limit.

As regards the liability of language rewards and examination fees, see paragraph 25. (Para 22 of the I. T. M.)

Casual gains. [Section 4(8)(vii)]. In order to obtain exemption as "casual", profits must comply with two conditions :—

- (1) They must not be proceeds of a profession, vocation or employment or arise from business, that is from "any venture or concern in the nature of trade, commerce or manufacture". [See section 2(4)], and
- (2) they must not be annual.

Both these conditions must be fulfilled. The exemption also is specifically not to apply to any gratuity to an employee for services tendered so as to avoid the possibility of any ambiguity in connection with the use of the word "gratuity" in section 7(1). The following are illustrations of the effect of the provisions of Section 4(3)(vii) :—

- (1) A purchases a house with a view to re-selling it at a profit. His profits from the transaction are liable to income-tax (even although it be an isolated transaction). B purchases a house for his own residence and later on sells it at a profit. His profits are not liable to tax.

(2) *A* wins a prize in a lottery or a bet on the race course. His receipts therefrom are not taxable. *B* is a book-maker. His profits from betting are taxable.

(3) *A* is a professional beggar. His receipts from mendicancy are not exempted from the tax by this sub-section.

(4) *A* makes a practice of speculating in the purchase and sale of shares. His profits therefrom are liable to the tax. *B* purchases Indian War Loan 1929-1947 at 95 redeemable at par. The premium received on redemption after a period of years is not liable to tax. On the other hand the yield from Treasury Bills arising from their issue at a discount and repayment at par after 12 months or some shorter period is liable to the tax under section 12, though as this yield is not interest, the tax is not deducted at the source under section 18(3).

(5) A man writes a book. His receipts from its sale are taxable.

(6) Lump sum legacies are exempt; annuities granted under a will are not exempt. (Para 23 of the I. T. M.)

PROFITS OR GAINS DEEMED TO HAVE ACCRUED OR ARISEN IN BRITISH INDIA.

Where a foreign company lends money in British India and receives interest in British India, such income accrues or arises in India: *In the matter of Bombay Trust Corporation Limited* A.I.R. 1928 Bom. 448. In the case of *Syed Ali Imam*, 85 I. C. 164; A. I. R. 1925 Pat. 281 it was held: "Money due to assessee from Native Estate and paid by being credited to his account in a bank in that Estate but afterwards transferred in his account with another branch of the same bank in British India, is not received in British India". But money is sent from outside British India and spent on religious institution in British India must be impressed with such trust before it leaves for British India for being exempted from tax, (A. I. R. 1928 Mad. 371). In the case of *C. Chettiyar*, 122 I. C. 349; A. I. R. 1930 Mad. 119, it was discussed whether partners in British India are liable to pay tax for profits outside British India.

In the case of *Arunachalam Chettiyar*, A. I. R. 1929 Mad. 769 it was decided that a joint Hindu family entitled to a share in a money-lending concern in Malaya Estate, the remittances to the family are taxable.

CLAIM IN CAPITAL.

If a man claims any interest in the capital of a business

and in the end receives a sum in satisfaction of all claim he may have in the capital of the business, the income is not liable to income-tax. The sum of money is not "income-profits or gains within the meaning of section 4 at all", *In the matter of N. S. Mandi*, A. I. R. 1930 Cal. 625 F. B. : 129 I. C. 411, the case of *Turner Morrison & Co.* 117 I. C. 689 : 33 C.W.N. 1123 distinguished. Attention is invited to the decision in the case of *Messrs Shaw Wallace & Co.*, 35 C. W. N. by the Calcutta High Court where it has been held as a capital receipt.

CASUAL AND NON-RECURRING

Income derived from business, profession or vocation is taxable *e. g.*, book-maker, better on horses *Patridge v. Malanlaine*, 18 Q. B. D. 276.

A non-business man having a casual income may be taxable if the transaction is in the nature of a business. Even when a person engaged in a particular trade deals in a different business, in business like manner, the income becomes taxable—*In re Churnilal Kalyandas*, 47 All. 372, *Stevens v. Hudson Bay Co.*, 5 T. C. 423 and *Benyon & Co. Ltd., v. Ogg*, 7 T. C. 125.

Whether any particular item comes within one or other of these heads, is purely a question of fact, depending on actual circumstances of the case. For instance, a profit on the sale of a house will normally be regarded as a capital or a casual profit, and, as such exempt; but when a person makes a habit of buying property which is later disposed of at a profit, the taxing authorities will decide that he is carrying on a trade or business, dealing in property and he is clearly chargeable. *Pearn v. Miller*, 6 A. T. C. 519, *Hudson Bay & Co. v. Stevens*, 5 I. C. 437. A premium received for the grant of a lease is a capital receipt and hence not assessable.—*Collyer v. Hoare*, 7 A. T. C. 542, but the sale out right of copyrights and patents by authors and inventors is not a transaction of a capital nature carrying exemption from tax.

Again voluntary gifts are normally exempt, but when the recipient has rendered services, which are the real grounds for the making of the gift, the latter will be assessable as remuneration, notwithstanding the fact that the individual concerned has no legal claim to the money received. Money received by a professional cricketer by way of benefits was held not to be assessable, *Reed v. Seymour*, 6 A. T. C. 433; but money paid by a race horse owner to a jockey who had ridden his horse successfully in an important race was taxable (*Wing v. O'Connell*) 1926 C.A. Similarly Easter offerings are assessable in the hands of the incumbent—*Herbert v. Mcquire*, 4 T. C. 489 (See also *Macdonald v. Shand*, A. C. 337, *Burson v. Avery*, 42 T. L. R. 145).

The illegal nature or source of the income does not stand in the way of its taxability when the transaction is by way of business, *Canadian Minister of Finance v. Smith*, 5 A. T. C 621, *Cooper v. Stubbs*, 2 K. B. 753, *Patridge v. Mulaindaine*, 18 Q. B. D. 276, *Graham v. Green*, 9 T. C 309 and *C. I. R. v. Von Glepe*, 12 T. C 232.

Lump sum payment in lieu of pension or by way of testimonial to retiring employees are allowable expenses—*In re Smith v. Incorporated Society of law Reporting for England and Wales*, 6 T. C 477, *Hancock v. General and Reversionary Investment Co. Ltd.*, 7 T. C. 358.

TIMBER STACKING.

If income is derived from letting land for stacking timber, such income is not agricultural within the meaning of section 4, *In the matter of Haraprasad*, 86 I. C. 1028 : A. I. R. 1925 Lahore 488.

INTEREST AGRICULTURAL OR NOT.

Conflicting decisions and rulings have so much complicated the matter that it is necessary to deal particularly the principle underlying this. Interest is taxable when it accrues or when such interest can be received at the assessee's will. But it is the system of accountancy that makes one responsible for assessment on the basis of cash or mercantile system, whatever it may be. An assessee may receive interest and still such receipt may not be liable to tax. *In the matter of Rajnitiprosad Singha*, A. I. R. 1930 Pat. 33 Full Bench. It was held that "the income sought to be assessed was rent derived from land used for agricultural purposes and hence exempt from assessment." Similarly it was held that in money-lending business where there was grant of loan on usufructuary mortgage with simultaneous lease back, the income is agricultural.

COMPOUND INTEREST.

Where compound interest is payable by a creditor with yearly rents and the creditor adds to the principal amount the interest accrued due at the end of the year, but did not receive payment either in cash or by counter credit in the debtor's account, such interest is not taxable within the meaning of the Income-tax Act: *In the matter of Venkata Chala Patty*, 69 I. C. 405 : A. I. R. 1922 Mad. 426.

AUCTION PURCHASE.

Where mortgage properties are auction purchased by the decree-holder in execution of a mortgage decree and the assets

of the debtor thus acquired are sold away such profits are assessable in view of the ruling in *In the matter of L. Chettiyar* 124 I. C. 151 : A. I. R. 1930 Mad. 121 ; the cases of *Arunachalam Chittiyar*, 77 I. C. 216 and *Purusttam Thakurdas*, A.I.R. 1924 Mad. 208 arrived at similar conclusion. The difference in price is "income" liable to tax.

PURCHASE OF MORTGAGED PROPERTY.

As soon as property is purchased, the mortgagee cannot be made liable to income-tax unless and until the sale from the sugar concern is not liable to assessment, although it is the duty of the authorities to determine the process adopted by the assessee.

AGRICULTURAL INCOME IN PERMANENTLY SETTLED ESTATES.

The Privy Council case of *Raja Provat Chandra Barua*, A. I. R. 1930 P. C. 209, upholding the decision of the Calcutta High Court reported in A. I. R. 1925 Calcutta 598, has set at rest, once for all by the finding, that jalkar is not agricultural income. In their Lordships' opinion "while the regulations contain assurances against any claim to an increase of the jama based on an income of the zamindari income, they contain no promise that a zamindar shall in respect of the income which he derives from his zamindari, be exempt from liability to any future general scheme of property taxation or that the income of a zamindari shall not be subjected with other incomes to any future general taxation of income." Their Lordships agree with the views expressed by Justice Ghosh of the Calcutta High Court in the following language from his judgment: "there was no promise or engagement of any description whatsoever by which the Government of the day surrendered their rights to levy a general tax upon income of all persons irrespective of the fact whether they are zamindars with whom the permanent settlement was concluded or not". In view of this finding the opinion of Messrs. Sen and Banerjee that "any assessee would be within his right to adduce particular facts and figures to show that any of the above items may be regarded as agricultural income" is fallacious and any argument, however plausible, cannot stand.

ROYALTY.

Minimum Royalty of mining lease is rent or revenue and as such is not assessable to income-tax, being agricultural income : *In the matter of Maharajadhiraj of Darbhanga*, A. I. R. 1930 Pat. 81.

INCOME OR CAPITAL.

But in the case of *Raja Shiva Prosad Singha* it was held that payment of lump sum is not assessable but if the lease

reserves rent of royalty payable periodically it is income : 82 I. C. 653. In *In the matter of Gupta Estate*, 126 I. C. 193 : 50 C.L.J. 375 : 34 C.W.N. 327 : A. I. R. 1930 Cal., it was held that the Selami paid to the landlord in consideration of his waiving forfeiture and resettlement is not taxable ; it is just in conformity with the ruling reported in *In the matter of Shiva Prosad Gupta*, 82 I. C. 653. If income represents capital or if income is from out and out sale, it is not taxable. Accumulated balance in provident funds paid to manager of Court of Wards is exempt. 10 P. L. T. 315. But a capital sum received by a manager of Court of Wards in commutation of the whole of his pension is exempt from taxation under section 4 (3) (v), but such amount is not exempt under section 4 (3) (vii)—*In re : J. E. Ratherford* 133 I. C. 360.

AGRICULTURAL INCOME.

Agricultural income has been defined under section 2(1) of the Income-tax Act. As to what is agricultural income and what is not, attention is invited to section 2(1) where it has been elaborately enumerated.

Rent or Revenue :—It has been held by the Full Bench of the Madras High Court in the case of *Ibrahim Shaha Ravatar*, A. I. R. 1928 Mad. 543 and also in the Allahabad case reported in A. I. R. 1928 All. 81 that usufructusry mortgagee leasing property back to the mortgagor—rent received thereof is agricultural ; but in *In the matter of R. P. Singha*, A. I. R. 1930 Pat. 33 : 123 I. C. 617 it was held that “nature of the transaction was not of an usufructuary mortgage and hence not exempt”. This distinguishes the cases of *Ibrahim Shaha Rowther*, A. I. R. 1928 Mad. 553 : 110 I. C. 207 and of *Mukunda Swarup*, 107 I. C. 683 : A. I. R. 1921, All. 81.

But in *In the matter of L. Chettiyar* reported in 122 I.C. 510, it was held that loan by money-lender in British India to persons outside British India on Tavana system and interest on such sum not actually received but credited is assessable—this is fully in conformity with the case reported in *Arunachalam Chettiyar*, 59 I. C. 450.

In *In the matter of J. M. Kasey*, A.I.R. 1930 Pat. 44, 128 I.C. 913 it was held that where an assessee cultivates plants not commonly cultivated and prepares fibre therefrom such income is agricultural.

CULTIVATOR'S PROCESS.

It has been held in the case of *Bhikampur Sugar Concern*, 53 I. C. 301, and in the case of *Killing Valley Tea Co. Ltd*, 32 C. L. J. 421, [as referred under section 2(1)] that the process employed by the applicant for the cultivation of the bushes and manufacture of tea and sugar as a commercial commodity

could not in its entirety be appropriately described as agricultural. Thus it can be safely presumed that when anything is manufactured without the assistance of any machinery the process must be regarded as the cultivator's process and income, if any, must be regarded as agricultural. In Bengal, it may be news to the Income-Tax Authority that in places like Kotchandpur and Keshobpur in Jessore District sugar is manufactured not by any machinery process but by the ordinary process employed by the cultivator. In the case it may be safely assumed that the income thus derived from the sugar concern is not liable to assessment; although it is the duty of the authorities to determine the process adopted by the assessee.

PROFITS EARNED ABROAD.

Generally it may be stated that the seat of a business is the place where the real control of the business is exercised. In this connection it is necessary to distinguish control from the actual conduct of a business. Assuming a person resident in this country who owns a business in Egypt or Canada, although the business may be conducted by agents residing abroad, and there is no actual interference by the owner, in the conduct of his local managers or agents, yet so long as he has the right to interfere, the control of the business will be regarded as residing in the U. Kingdom and the profits will be assessable—*Oglive v. Kilton*, 5 T. C. 388.

Similarly a company whose activities are carried on entirely abroad but whose effective control is resident in this country was held to be assessable as an undertaking carried on here—*De Beers Consolidated Mines v. Howe*, 5 T. C. 198; *cf. San Paulo Ry. Co. v. Carter*, 3 T. C. 407; *B. W. Noble Ltd. v. Mitchell*, 11 T. C. 372.

This doctrine has been taken even further, and in a case decided as long ago as 1899 (*Anthonpe v. Peter Schochhopen Brewing Co.*, 80 L. T. 395), it was held that the profits of a company incorporated abroad owned and actively managed by a company resident in the United Kingdom were assessable, as profits of an undertaking carried on here. Mere ownership of all the shares, or a large proportion of the shares, of a foreign company will not of itself make the profits of that company the profits of the owner in this connection—*Kodak Ltd. v. Clark*, 4 T. C. 549, *Gramophone & Typewriter Co., Ltd. v. Stanley*, 5 T. C. 358.

ASSESSMENT OF NON-RESIDENTS IN RESPECT OF PROFITS ARISING IN THE UNITED KINGDOM.

When a non-resident person derives profits from enterprises carried on in the United Kingdom, assessments may

be raised and tax charged either directly on the non-resident where that can conveniently be done or upon any agent, factor, branch or local manager, whether that agent has or has not the receipt of any of the profits or gains of the non-resident principal and whether the entire profits do or do not arise directly from the agency.

Where the agent has the receipt of any moneys of his principal he is entitled to retain any tax he has borne on account of the liability of his principal out of such moneys. These provisions do not apply in the case of a broker or general commission agent in respect of transactions carried through on behalf of non-resident principals in the ordinary course of his business, for a consideration not less than the rate of remuneration customary for that class of business.

It should be noticed (a) that there is no need to assess and charge the agent when the principal can be charged personally (*Tischler v. Apthorpe*, 2 T. C. 89) and (b) that the transaction in question must be, technically, carried out in the United Kingdom. This principle is one which is not always easy to interpret in practice. As a rule the fact that a contract is made in the United Kingdom will be sufficient to establish the fact that the profits arising from that contract are profits or gains arising in the United Kingdom (see inter alia, *Gavazzi v. Mece*, 42 T. L. R. 389, *Boyd v. Stephens*, 5 A. T. C. 247, *Nilsen, Anderson & Co v. Collin, Tarn v Scanlan*, 42 T. L. R. 420. But when the contract is completed entirely outside the United Kingdom the profits arising thereout will not be chargeable to Br. Income Tax by reason only of the fact that the contract was actually made in this country—*McLaine v. Eccost*, 42 T. L. R. 416.

The situation may be summarised briefly by stating that where a non-resident person makes contracts and derives profits therefrom as the result of opening a branch or employing a regular agent in this country he can be assessed and charged to United Kingdom Income Tax, but when he conducts his business from his own country he cannot be reached, notwithstanding that he may make considerable profits out of his transactions with customers in this country.—*Newport*.

NON-TAXABLE INCOME.

Section 4 (3) mentions nine classes of income where this Act is inapplicable and necessarily, income, profits or gains, if any, therefrom, are not taxable and even any income from these classes are not taken into account in computing the total income of the assessee.

I deal with income derived from property held under Trust e.g. section 4 (3) (1) and (2) together.

PROPERTY HELD UNDER TRUST ETC.

With a view to fostering institutions of a beneficent public character on the one hand, and to administrative economy and convenience in dealing with the taxation of the income of certain bodies and funds on the other, the I. T. Acts provide a number of special exemptions, reliefs and other privileges, which in conjunction with certain other legal rules and departmental arrangements, extend to a very considerable number of actual or potential tax payers.

RELIGIOUS AND CHARITABLE PURPOSES.

The term "charity" has a legal meaning considerably narrower than that in popular conception.

It implies a body or fund established under a definite and irrevocable trust for charitable purposes only—*In re Rank's Trustees*, 38 T. L. R. 603.

"Charitable purposes" include the relief of poverty, the advancement of education or religion, and similar activities beneficial to the community in general or to a large section of the community, as distinguished from any limited class of persons—*Special Commissioners v. Pemsel*, 3 T. C. 53.

The promotion of education is not a charitable purpose—*In re Headmaster's conference*, 10 T. C. 748, although its advancement may be included among the objects of charity to which exemption may be given.

TRUST—DEFINED.

Section 3 of the Indian Trusts Act, defines Trust thus—

"A trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another, or another and owner".

A trust may be created verbally, but when the subject matter of Trust is above Rs. 100 affecting any immovable property it must be duly registered, otherwise it will not be operative.

Hindu Law :—Although the Hindu Law does not permit a desire to an individual at the time of death of the testator, there is nothing to prevent a desire or a charge in favour of the service of an idol, or for the endowment of a temple or for the maintenance of private or public religious ceremonies or worship or for charitable purposes or an endowment for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any object beneficial to mankind.

Religious and charitable endowments :—The terms of an endowment will ordinarily be ascertained from the instrument of creation or if the creation be by the word of mouth by the statement of the endower at the time of creation ; where from lapse of time or for other reasons such evidence is not obtainable, the terms can be ascertained from the practice of the endowment or from the practice of similar endowments.

No writing is necessary to create an endowment—*Madanpal v. Konnel Bibee*, 8 W. R. 42, *Pallay v. Ramdhan lala*, 13 M.L.T. 364, except when the endowment is created by a will, in which case the will must be in writing and attested by at least two witnesses, if the case is one to which the Hindu Wills Act, 1870, applies.

A Hindu, who wishes to establish a religious or charitable institution, may express his purpose and endow it.

A trust is not required for that purpose. All that is necessary, is, that the religious or charitable purposes should be clearly specified, and that the property intended for the endowment should be set apart for or dedicated to those purposes.

Even in the case of a dedication to an idol, which cannot itself physically hold lands, it is not necessary, though it is usual to vest the lands in trustees. Nor is it necessary, that there should be any express words or gift to the idol.

At the same time it must be noted that the mere execution of a deed, though it may purport on the face of it to dedicate property to an idol, is not enough to constitute a valid endowment, for the real object of the executant may be to defraud creditors, or to defeat the provisions of the ordinary law of descent or to restrain alienations and keep the property in perpetuity in the family. It is absolutely necessary to the validity of a deed of endowment that the executant should divest himself of the property. Whether he has done so or not, is to be determined by his subsequent acts and conduct. Thus if the profits of the property are to be appropriated by the executant to his own use, and not to the worship of the idol and his subsequent dealings with the property show that he did not intend to create an endowment, the dedication will be inoperative and the property cannot be treated as Debutter i.e. belonging to the idol.

The Indian Trusts Act does not apply to public or private religious or charitable endowments—*Gope v. Swami*, 28 Mad. 517.

Charitable uses :—“Here its signification is derived chiefly from the statute of Elizabeth (stat 43 Eliz. C. 4). Those pur-

poses are considered charitable, which that statute enumerates or by analogies are deemed within its spirits and intendment; and to some such purpose every bequest to charity generally shall be applied" per M. R. in *Morice v. The Bishop of Durham*, 9 Ves. 399. This decision was affirmed by Lord Chancellor in 10 Ves 522. We find that the preamble of the statute 43 Elizabeth, C. 4, expressly recognises the following :—

relief of aged, impotent and poor people, maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars in universities, repair of bridges, ports, havens, cause-ways, churches, sea-banks and highways, education and preferment of orphans, the relief, stock or maintenance for houses of correction, marriages of poor maids, supportation, aid and help of young tradesman, handicraft men and persons decayed, relief or redemption of prisoners or captives; aid or ease of any poor inhabitants concerning payment of taxes."

"The general principle appears to be that a charitable purpose must be one for the benefit of the public or a section of the public, and not for the private benefit of the donor or his family or of certain individuals—*Colgan v. Administrator General of Madras*, 15 M 424".

"The Commr. of In. Rev., until recently construed them in the sense which the Court of Chancery would have attributed to them in construing a deed or will: that is, as including purposes coming within the thing or purview of stat. 43 Eliz, C. 40—per Singer C. J. in *University of Bombay v. Municipal Commr. of Bombay*, 16 B. 217.

In *Pemsel's case* (1891) A. C. at p. 583 Lord Macnaughten said: "charity in its legal sense comprises four principal divisions, trust for the relief of poverty, trusts for advancement of education, trust for the advancement of religion, and trust for other purposes beneficial to the community.

Trusts for advancement of education—Under this head comes gifts for the benefit, advancement, and propagation of education and learning—*Whicker v. Hume*, 7 H. L. 124; for the advancement and propagation of education in economic and sanitary sciences or law—*Smith v. Ker*, (1902) 1 Ch. 774.

To found a school for the sons of gentlemen—*A. G. v. Lord Lonsdale*, 1 Sim. 105 or to found prizes for essays on a given subject—*Briggs v. Hurlly*, 19 L. T. Ch. 416.

Trust for the advancement of religion—Bequest for the advancement of christian religion among infidels—*Att-Gen. v. college of William & Mary*, 1 Ves. Jun. 245; for the building of church—*Att. Gen. v. Ruper*, 2 P. Wm, 125 etc.

Trusts for other purposes beneficial to the community—It is not every object of public utility that constitutes a good charity.

RELIGIOUS USES.

It has already been said that in England it is a nice question whether gifts for religious institutions or religious purposes generally are at the present day good charitable gifts. Prima facie it would seem that a religious institution or a religious purpose is not necessarily charitable—*Theobald*, 7th Edition 356-57. In India there is no such difficulty as we have the words 'religious uses.'

The Court of chancery makes no distinction between one kind of religion and another, nor between one sect and another—*Thornton v. Howe*, 31 Bea. 14.

CASE LAWS U/S 4 (3)(1) & (2).

Income of charitable and religious institution.

Income derived from profits in trade or business though the income may be dedicated to an idol, is not income from trust property and hence not exempt. *In re: Luchmon Das Narayan Das*, 84 I. C. 207. In the case of *Md. Ibrahim Reja Malak*, 125 I. C. 879, it was held that where the purposes of trust are not wholly religious or charitable, exemption cannot be claimed; 105 I. C. 155, A. I. R. 1928 Nag 10 affirmed by virtue of the ruling reported in A. I. R. 1930 Privy Council 226. But income from office held on express term that profits therefrom would be devoted to charitable purpose is not exempt although the profits are spent for religious purposes, A. I. R. 1925 All. 115, *Commissioner of Income-tax v. Eggur* 100 I. C. 255 relied on. Similarly when properties are set apart in trust, and its income to be applied for religious purposes and such income is invested in business profits therefrom are liable. English principles are applicable, A. I. R. 1925 All. 115 followed: *In re: Thevera Patshala*, 96 I. C. 957.

Fund alleged as for charitable purpose but found completely within assessee's volition, no deduction is permissible. A. I. R. 1928 Nag. 102; *In re: Bangsital Abirchand*. But where the purposes of trust are not wholly religious or charitable it was held "that the income from trust property was not exempt from tax as it was not income derived from property held under trust or other legal obligation wholly for religious or charitable purposes within the meaning of the section: *In re: Md. Ibrahim Reja Malak*, 125 I. C. 879: A. I. R. 1930 Privy Council 226; A. I. R. 1928 Nag. 10 affirmed. Where whole income is set apart expressly for religious and charitable purposes, the Income tax Act is inoperative and inapplicable. *In re: Umar Bakhsh*, 132 I. C. 689, it was held that the pro-

perty held by the assessee under the wakf was not properly held under trust wholly for religious purposes and income therefrom was assessable.

UNDER SECTION 4(3)(7) ; CASUAL AND NON-RECURRING NATURE.

Remuneration earned by a cotton merchant who is appointed under a power of attorney to relieve the cotton which another merchant had purchased is "Receipt arising from business" and is liable to be assessed to income-tax, *In re: Sir Parshottam Das Thakurdas*, 87 I.C. 706: 27 Bom. L.R. but in *In the matter of Turner Morrison & Co.*, A. I. R. 1929, All. 212 F. B., it was held that "compensation thus given was receipt arising from business and was not exempted from income-tax".

COMPOUND INTEREST.

(*Capitalisation or not.*)

It is customary with money-lenders when advancing a loan to write in the bond on which money is advanced that if interest is not paid by due date, the interest will be added to the capital. It has been held further that income accrues or arises when it can be secured by a little exertion on the part of the assessee; it has also been said in the case of *L. Chettiyan*, 124 I. C. 151, that when no payment is made to the creditors either in cash or by credit in the debtor's account such interest is not taxable. But in the case of *Raghunandan Prosad Singha*, 122 I. C. 705; A. I. R. 1929 Pat. 476 it was held that when compound interest is added to the capital, such interest is income, profits or gains within the meaning of the Income-tax Act. It was held "interest does not cease to be income, profits or gains and assessable as such because at the end of certain specific period it is added to the capital so that it may bear interest. An agreement as to compound interest does not affect capitalisation." Thus it is clear that when compound interest is added, it cannot be regarded as a capital investment. A decree does not imply any receipt and necessarily as soon as the decree is passed or a mortgaged property is purchased, profits can only accrue when the sale is confirmed and not before that: *In the matter of Raghunandan Prosad*, 122 I. C. 705; A. I. R. 1929 Pat. 476. It may be observed that Income-tax Officer cannot insist, when making an assessment that appropriation must be first to interest and then to principal and income arises or accrues then and then alone when the sale is confirmed.

GOVERNMENT PROMISSORY NOTE.

When G. P. Notes are issued in British India and interest enfaced payable outside British India, it has been

held that such interest arises and such is taxable: *In the matter of Raja Bahadur Bangshi Lal Matilal*, 125 I.C. 476 F.B. In *In re : Pondicherry Railway Co. Ltd.*, A. I. R. 1931 P. C. 165. It has been held that the foreign company is liable to assessment on the basis of income received in British India—*South Behar Railway Company v. I. R. Commissioner* (1925) H. L. 476, relied on.

Commission earned on sales made in British India accrues in British India—*In re. Sarup Chand Hukum Chand*, A. I. R. 1931, Bom. 236.

CHAPTER II.

Income-tax Authorities

5. (1) There shall be the following classes of Income-tax authorities for the purposes of this Act, namely:—

- (a) The Central Board of Revenue,
- (b) Commissioners of Income-tax,
- (c) Assistant Commissioners of Income-tax, and
- (d) Income-tax Officers.

* * * * *

(3) *The Governor General in Council may appoint a Commissioner of Income-tax for any area specified in the order of appointment.*

(4) Assistant Commissioners of Income-tax and Income-tax Officers shall, subject to the control of the Governor General in Council, be appointed by the Commissioner of Income-tax by order in writing. They shall perform their functions* *in respect of such persons or classes of persons and of such incomes or classes of income and in respect of such areas as the Commissioner of Income-tax may direct† and where two or more Assistant Commissioners of Income-tax or Income-tax Officers have been appointed for the same area, in accordance with any orders which the Commissioner of Income-tax may make for the distribution and allocation of the work to be performed.* The Commissioner may, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Assistant Commissioner by or under this Act, shall, in respect of any specified case or class of cases, be exercised by the Assistant Commissioner and the Commissioner, respectively, and, for the purposes of any

* Amended by the Indian Income-Tax (Second Amendment) Act 1933 (XVIII of 1933)

† Inserted by the Indian Income-Tax (Second Amendment) Act 1933 (XVIII of 1933)

case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Assistant Commissioner shall be deemed to be references to the Assistant Commissioner and the Commissioner, respectively.

(5) The Central Board of Revenue may, by notification in the Gazette of India, appoint Commissioners of Income-tax, Assistant Commissioners of income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income, and for such area, as may be specified in the notification, and thereupon the functions so specified shall cease, within the specified area, to be performed, in respect of the specified classes of persons or classes of income, by the authorities appointed under sub-sections (3) and (4).

(6) Assistant Commissioners of Income-tax and Income-tax Officers appointed under sub-section (4) shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax appointed under sub-section (3) for the *area* in which they perform their functions.

JURISDICTION.

The Income-tax Officers are entitled to make assessment within their territorial limits as defined by the order of appointment "in respect of such persons or classes of persons and of such income or classes of income" as the Commissioner of Income-tax may direct.

Thus the Income-tax officers derive their authority from the Commissioner and an assessment or even an initiation of proceedings beyond the nature of appointment is tantamount to an illegal assumption of authority. It is not only illegal but *ultra vires* too. The Income-tax Officers cannot exercise a jurisdiction not vested on them by law. Chief Justice Rankin of the Calcutta High Court in the case of *Lachmiram Basanta Lal Nathani*, 33 C. W. N. 1206 observes: "the question is whether these persons in Calcutta whose cases may be made over to me are a class of persons within the meaning of cl. 4, sec. 5. I am clearly of opinion that it is not. It is not possible for any assessee or other persons by looking to the definition given in this order to ascertain whether or not his

case is one which is affected by it. This order requires special direction to be given under it from time to time assigning, not in classes but individual cases, to the officers in question. There may or may not be objection, serious or otherwise to such a course but I am clear that it is not a course warranted by sub-section 4 of section 5 of the Act.

But the object of the recent amendment is to enable the Commissioner of Income-tax to appoint special Income-tax Officers to deal with specially difficult or important cases and to post 2 or more Assistant Commissioners or Income-tax Officers to a single district and distribute the work with a view to convenience or avoidance of congestion of works.

INCOME-TAX OFFICER AND ADDITIONAL INCOME-TAX OFFICER;
EXAMINER OR INSPECTOR OF ACCOUNTS.

It has been pointed out that section 5 barring other authority, speaks of Income-tax Officers alone. Such officers derive their authority and jurisdiction from their Commissioner "in respect of such persons or classes of persons and of such income or classes of income".

The Act nowhere mentions additional Income-tax officer and Examiner or Inspector of Accounts, although, as a matter of practice, such officers are found in abundance for administrative convenience and expediency.

An Additional Income-tax officer is entitled to make assessment when he derives his jurisdiction from Commissioner and must write his name as Income-tax Officer.

Consent cannot and does not give the Income-tax Officer any jurisdiction, neither the Income-tax Officer is competent to transfer a case of his jurisdiction to the file of another Income-tax officer for heavy pressure of works etc., simply because the transferee Income-tax officer does not derive his jurisdiction from the Commissioner and a proceeding drawn or assessment made without jurisdiction amounts to an illegal assumption of authority.

The Act does not speak of Examiners or Inspectors of accounts but they have been retained for administrative convenience. These administrative officers practically examine all books of accounts of the assessee when produced on requisition by the Income-tax Officer and the results of their examinations are reported to the Income-Tax officer who, in his turn, examines books of accounts of the said assessee and may accept or reject the finding of the Examiner or Inspector of Accounts and completes the assessment finally.

Generally the findings of the Examiner if not challenged by the assessee are approved by the Income-tax Officer. But it

seems to me that the intention of the authorities is to provide a system of double checking, once by the Examiner and then by the Income-tax Officer and if that be the intention it is desirable that the Income-tax Officer must write out separate assessment order and should not ditto the results of the scrutiny made by the Examiner. In mufassil areas, 2 officers, 1 Income-tax officer and the other an additional income-tax Officer are posted in each district, in some case 1 Income-tax officer is posted to carry out the work with the help of an Examiner of Accounts who practically does the bulk of assessment works subject to the approval of the Income-tax Officer. I think administrative efficiency will not be impaired if Examiners of Accounts are also designated as Income-tax Officers to make assesment themselves to a limited extent.

CONCURRENT JURISDICTION.

Income-tax Officers cannot exercise concurrent jurisdiction. Exercise of concurrent jurisdiction is against the spirit of law and there is bound to be a clash of findings when arriving at an adjudication. All income-tax officers derive their jurisdiction from the Commissioner and as such there is hardly any scope for overlapping. Moreover, section 64 of the Act, is a bar. The law and practice as they stand are that an assessee shall be assessed by the Income-tax officer where he carries on his business, but where the business is in more places than one, then, he is to be assessed by the Income-tax officer of the principal place of business and in other cases, an assessee shall be assessed by the Income-tax Officer of the area where he resides except in certain special cases.

Section 64, cl. 4 says that "notwithstanding anything contained in this section, every Income-tax officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income profits, or gains accruing or arising or received within the area for which he is appointed".

The clause, as it stands, seems to lend colour to the view that so far as the branch income is concerned the jurisdiction of the Income-tax Officer of the principal place of business is ousted and that the jurisdiction is apparently concurrent. But as a matter of fact, the jurisdiction of Income-tax Officer of the principal place of business is not ousted.

Under section 64, the income-tax officer of the principal place of business has the duty of assessing the whole of the income derived from the principal place of business as well as the various branches. Sub-section 4, no doubt, authorises every Income-tax Officer to exercise his powers of an Income-tax officer with regard to the profits etc., accruing or arising in that area (*In Re : Lachman Das Baburam*, 88 I. C. 216).

But there is a fundamental difference inasmuch as, the branch Income-tax officer is merely a reporting officer whereas the Income-tax officer of the principal place of business is the assessing officer. The latter may or may not accept the finding of the Income-tax Officer of the area where the assessee has his branch business. The Act enjoins on the Income-tax Officer to call for branch accounts under section 22, cl. 4, and if the assessee does not comply with the requisition, he has no other alternative than to report an estimated income of the assessee to the Income-tax officer of the principal place of business. Where, at the time of the final assessment by the Income-tax Officer of the principal place of business, the assessee makes a default by not producing the branch accounts he shall be assessed on the basis of the report as the branch Income-tax officer is expected to know the local state of affairs best, but where compliance is made, there is absolutely no bar for an Income-tax Officer to proceed to make an assessment on the basis of accounts produced.

Though no simultaneous assessment should be made at different places on the same person, there is nothing illegal in an Income-tax officer of the place giving an estimate of profit made by the assessee at that place and forwarding that estimate to the Income-tax Officer of another place. *Ram Khelwar Ugamlal v. Commissioner of Income-tax*, 144 I. C. 211.

CHAPTER III.

Taxable Income.

6. Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income-tax in the manner herein-after appearing, namely :—

- (i) Salaries.
- (ii) Interest on securities.
- (iii) Property.
- (iv) Business.
- (v) Professional earnings.
- (vi) Other sources.

NOTE.

Under section 6 of the Income-tax Act several heads of income, profits or gains chargeable to income-tax have been mentioned with a view that particular rules, methods of calculation, deductions with regard to each particular head can be given effect to. Take for instance, an assessee derives his income from house property, from business and from other sources. It is also common knowledge that the house property income cannot be a minus or negative sum and hence it is essential to show in the return the actual receipt from house property after deducting all admissible expenditures. Similarly the assessee will have to show separately the income he derives from fisheries, hat or Bazar etc.—this comes within other sources as defined in section 6. On the other hand business income is to be shown under the head business irrespective of the income shown in the other columns. The six heads of income chargeable to income-tax have been mentioned for the best interest of administration and for guidance to the assessee with a view that no sources of income can escape assessment.

CASE LAWS.

It has been held in the case of *T. Manavaden*, A. I. R. 1930 Mad. 561 : 126 I. C. 596, that income derived from sale of

timber trees is taxable under section 6, (*vide* also A. I. R. 1930 Mad. 764). Under section 6 where interest stands unrealised but is credited in accounts such income is not taxable: *In the matter of S. M. Chitnavis*, 117 I.C. 258 : A.I.R. 1929 Nag. 60. Similarly annuity for maintenance is assessable as is reported in the case of *Bejoy Sing Dudhuria*, 57 Cal. 918 : A. I. R. 1930 Cal. 641.

CO-OPERATIVE SOCIETY.

Where a co-operative society invests fluid assets in Government Securities under Government order and such investment is not a part of their business, interest which accrues on those securities is taxable under section 6, A.I.R. 1929, Pat. 187. Law as it stands is that income of a co-operative society is not taxable but when it functions such works which are no part of its business income from such business is taxable.

LUMP SUM RECEIPT.

Income of Capital.—Where an assessee receives as *selami* a lump sum for granting a lease, such receipts are not “income” within the meaning of the Income-tax Act but are capital receipts, in view of the fact that it is an out and out sale as reported in the case of *Shivaprosad Singha*, A. I. R. 1924, 679. But where Royalties are paid to lessors, these are none the less income though they are paid for rights, the exercise of which involves a loss of capital.

WAGERING CONTRACT.

Justices Walsh and Ryves observe in *In the matter of Chunilal Kalyan Das*, 81 I. C. 95 : “There is no ground for saying that the profits arising from illegal business are not taxable. There is not a word in the Act to suggest anything of the kind and it is a fallacy to say because the taxing authority levies from a person who is carrying on profitable business, but improper and illegal business or profession, that therefore the authorities are countenancing such a profession. They are doing nothing of the kind. Then permission is not required and is not given and cannot be withheld to a person who chooses to carry on an illegal business, but the tax upon the profits arising therefrom has to be paid in common with the tax paid by every honest trader. Section 6(4) provides the head of income chargeable in respect of business. The mere fact that the business is speculative or even gaming and wagering within the meaning of that expression, does not make it any the less business. This is in conformity with the ruling of *Patridge v. Malandaine*, 18 Q. B.D. 276, where both the words ‘business’ and ‘vocation’ are used. It may be appropriate to describe a bookmaker’s business as a vocation, but the greater includes the less, and it is clearly included in the word ‘business’ in our

opinion. The same view seems to have been taken in the text-books on the subject with regard to the vocation of a singer or prostitute and the Calcutta High Court in the case of *Birendra Kishore Manukya*, 48 Cal. 766 held that the illegal cesses were assessable to income-tax". Thus 'income' from illegal gratifications, abwabs and any income derived from unlawful means, is assessable.

7. (1) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits received by him in lieu of, or in addition to any salary or wages, which are paid by or on behalf of Government, a local authority, a company, or any other public body or association, or by or on behalf of any private employer :

Explanation.—The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub-section :

Provided that the tax shall not be payable in respect of any sum deducted under the authority of Government from the salary of any individual for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary.

(2) Any income which would be chargeable under this head if paid in British India shall be deemed to be so chargeable if paid to a British subject or any servant of His Majesty in any part of India by Government or by a local authority established by the Governor-General in Council.

SALARIES.

"The income taxable under this head includes not only fixed salaries or wages and annuities or pensions, but also any fees, commissions, perquisites or profits received in lieu of, or in addition to, salaries or wages which are paid to an employee by or on behalf of any employer. Under the Act of 1918 the income chargeable under this head applied only to 'salaries' in the above sense when paid by or on behalf of Government,

a local authority or company, any other public body or association or by or on behalf of any private employer who had entered into an agreement with the Income-tax Officer to recover the tax on behalf of Government, but under the present Act it applies to all salaries paid by or on behalf of every private employer, the obligation to deduct income-tax from salaries being under section 18 (2) of the Act an obligation on every employer.

A payment made on retirement, etc., to an employee from a private provident fund, that has been formed into a genuine trust, cannot be regarded as a payment of salary within the meaning of section 7(1) of the Indian Income-tax Act XI, of 1922, because (for one thing) the trust is not the employee's employer. Such a payment is, therefore, not liable to taxation by deduction of tax at source". (I. T. Manual).

FEES OF GOVERNMENT PLEADER.

Fees (including retaining fees) paid to Government Pleaders and Public Prosecutors are not "salaries" within the meaning of section 7 of the Act, but are "professional earnings" within the meaning of section 2 of the Act.

The proviso to sub-section (1) applies only to compulsory deductions made under the authority of government and not to compulsory deductions made by other employers. The amount exempted under this proviso has, however, to be taken into account under section 16(1) in computing the total income of an assessee for the purposes of determining whether he is liable to tax and the rate at which he is to be assessed. An assessee, for example, who has a salary of Rs. 180 per mensem or Rs. 2,160 per annum and from whose salary a compulsory deduction is made by the authority of Government of Rs. 300 per annum of the nature referred to in this proviso is liable to pay income-tax on Rs. 1,860 at the rate applicable to an income of Rs. 2,160.

Under section 58 of the Act this proviso does not apply to super-tax, that is, no allowance of this kind is made for super-tax purposes.

REWARDS FOR PASSING LANGUAGE EXAMINATION.

Rewards for passing language examinations are not taxable unless by the conditions of his employment the assessee is compelled to pass the examination. Where they are taxable, they are taxable as salaries and tax should be deducted at source.

EXAMINER'S FEES.

In regard to examiners' fees, if the conduct of the examination is part of the assessee's duties, the position is precisely

the same as regards the passing of an examination. Even if it cannot be said that the assessee is under any obligation to do the work for which the fees are paid, the fees will be liable to tax if the work done can be regarded as incidental to the exercise to the assessee's profession, occupation or vocation, as when a school master conducts an examination or a vakil sets or values papers in law examination and should then be taxed as "Professional earnings". When there is no such close connection between the work done and the assessee's profession, for example, if a member of the Indian Civil Service sets a paper in history, it would still be for the assessee to prove that the income was non-recurring, and in the absence of such proof the income would be taxable as income from "other sources". In such a case it would hardly be possible to tax such fees on the first occasion on which the assessee received them, but if he again received them in the following year the first year's fees could be taxed under section 34.

Honoraria or fees paid to Government servants by local bodies or private persons, companies, etc., for professional work, the whole of which are in the first instance credited to Government, after which the whole or part is drawn under proper sanction by the Government servant concerned on a bill, should be taxed as salary by deduction at source. They are obviously fees, commissions, or perquisites received in addition to salary and paid by or on behalf of Government. [Section 7(1)].

For classes or portions of "salaries" which are entirely exempt from tax, *see* paragraphs 17(1), (2), (4), (5), (11), (14), (15), (16), (17), (18), (19), (20), (21), (22), (25), (26), (29), (30) and (31).

ADVANCE—SALARY.

Income under this head is always included in the income of the year in which it is received irrespective of the period in respect of which it was earned, with the solitary exception that where an officer of Government takes an advance of pay, the tax is not chargeable on the advance, but the tax is charged on the full salary of the month on which the advance is recovered by deduction without any regard to the deduction.

ATTACHED SALARY IF TAXABLE.

A portion of a salary withheld under the orders of a Court is liable to tax. (Para 25 of the I. T. M).

SALARIES PAID IN INDIA BUT OUTSIDE BRITISH INDIA.

7(2). This sub-section makes chargeable, under this head, salaries paid from India revenues to Government employees in any part of India and salaries paid by a local authority established in exercise of the powers of the Governor-General in Council. All servants of Government or of such local au-

thorities are, therefore, liable to pay tax on the salaries if they are employed in any part of India and irrespective of their nationality.

RULES RELATING TO BRITISH SUBJECT AND ALIEN SUBJECT.

The words "or any servant of His Majesty" in this sub-section were inserted in the Act of 1918, so as to bring all servants of the Crown, whether British subjects or not within the purview of this sub-section, on the ground that it seemed unnecessary to give to persons who were not British subjects specially favourable treatment which was not accorded to British subjects.

The pay of officers whose services have been lent to, and whose salaries are paid by, Indian States are not chargeable received in British India ; but the leave allowances and pensions of such officers are chargeable to income-tax unless covered by any of the exemptions in paragraph 17. The Government of India recover contributions at fixed rates from the Indian States to meet the cost of leave allowances and pensions of officers in foreign service and make themselves responsible for paying the leave allowances and pensions of their employees earned in foreign service. The portion of salaries of Government officers serving in Indian States, which is paid in the first instance by the Government of India but is subsequently recovered from the State concerned, is not liable to income-tax. (Para 26 of I. T. M.)

SALARIES, ETC., PAID OUTSIDE INDIA.

Under exemptions Nos. 21-25 quoted in paragraph 17, leave allowances or salaries paid in the United Kingdom to, or drawn from any Colonial treasury by, officers of Government on leave or duty in the United Kingdom or in a Colony and the pensions of officers of Government residing out of India, which are paid in the United Kingdom or are drawn from any Colonial treasury, are exempt from tax. Similarly under exemptions 19A and 21A leave salaries or leave allowances paid in the United Kingdom or in a Colony to officers of local authorities or to employees of companies or of private employers on leave in the United Kingdom or in a Colony and pensions paid in the United Kingdom or in a Colony to officers of local authorities, or to employees of companies or of private employers provided such officers or employees are residing out of India, are exempt from tax. Vacation salaries paid in the United Kingdom or in a Colony to Judges of High Courts or of Chief Courts, to Judicial Commissioner or to other officers of Government when on vacation therein are also exempt from tax (*vide* exemption No. 24 in paragraph 17.)

Pay and allowances drawn by officers from the Indian

revenue which are earned by them by service outside India are not liable to tax unless they are drawn or received in India. (Para 27 of the I. T. M.)

SALARIES.

Exemption by virtue of section 60 of the Income-tax Act-- The Governor-General in Council is entitled to declare any class of persons or portion of salaries totally exempt from assessment. (*Vide* remarks under sec. 60).

DEFERRED ANNUITY.

Where any sum is deducted from the salary under the authority of the Government for the purpose of securing a deferred annuity no tax can be charged for the sum so deducted provided the sum so deducted shall not exceed $\frac{1}{4}$ th of the salary.

DESTINATION OF PROFITS

Whenever any salary, wages, pension or annuity, etc., are paid by, or on behalf of Government, it must be presumed that the sum is chargeable irrespective of its destination whether within local limits or outside British India. As a matter of fact destination of profit is irrelevant. In *Bejoy Singha Dudhuria*, A. I. R. 1930 Cal. 641 and 644 it was held under section 10 "the first question is whether the Raja is a person who carries on a business. If so he is liable according to the section and in my opinion it is clearly impossible to make room for a deduction on the ground that he has to pay the annuity out of the profit. *Prima facie* the destination of profit is irrelevant." No deduction is permissible under head "salaries" except the allowance for premium for Life Insurance and Provident Fund contributions to a limited extent.

PERQUISITE.

The term denotes that whenever any benefit is enjoyed by an assessee which is neither money nor capable of being converted into money, such benefit is perquisite in the real sense of the term. As a result of this definition rent free quarters are liable to taxation. But as a matter of practice, by an Executive fiat, it has been so arranged that when an employee enjoys the privilege of a rent-free quarter, the money value shall not be taken at more than 10% of the salary of the employee.

REFUND.

Salaries as a whole are to be deducted at sources. This procedure may often result in higher deduction and the assessee is often affected by the rate. But under section 48(3) where the assessee presents an application for refund in the pres-

cribed form he is entitled to get a refund of the differences. As a matter of fact salary of employees is taxed and no deductions are allowed for earning the profits. It seems proper that an employee drawing salaries can hardly claim deduction of expenses because of the fact that all personal or private expenses of the assessee are not admissible deduction and such expenses are not incurred solely for the purpose of earning profit. In the case of *Mahiuddin Ahamad*, 27 Cal. 674 it was held that where income is received by the superior of a Khankha (a kind of monastery) such income is not salary under section 7 but it is an agricultural income within the meaning of section 4.

COMPENSATION FOR ABRUPT LOSS OF OFFICE.

In the case of *Turner Morrison & Co.*, 33 C. W. N. 112, it was decided by the Calcutta High Court that where the managing agent received compensation for loss of office such compensation is a receipt from business and as such is taxable. The decision of the Calcutta High Court is dubious. But it seems proper that receipt of compensation as is reported in this case is a business receipt. Section 10(viii)(a) runs thus:—"Any sums paid to an employee as bonus or commission for service rendered where such sum would not have been payable to him as profit or dividend if it had not been paid as bonus or commission." Thus it is clear that compensation, if any, received by an assessee may be not liable to assessment if such compensation comes within the meaning of receipt of capital asset in the nature of a good will. But in this particular case possibly it cannot be urged that it is not a business receipt. But in the case of *Messrs. Shaw Wallace & Company*, 35 C. W. N. 361, it was held that the sums were the capitalised value of future income and as such not taxable, there being no fact or findings to warrant the conclusion that they were mere payments in advance of earnings of the assessee over a period so short as to suggest that the receipt was income. (The case of *Turner Morrison & Co.* was distinguished.)

SALARY FREE OF INCOME-TAX.

Where an employee receives salary, free of income-tax, such an advantage is an addition to salary and as such is a perquisite within the meaning of section 7 [Vide *Hartland v. Diggins*, 10 T. C. 47, relying on the decisions of *North British Railway Company v. Scott* (1923) A. C. 37. & *Ashton Gas Company v. Attorney General* (1906) S. E. 10].

The term perquisite includes within its purview free conveyance, free medical aid, and free board etc., but these advantages are not convertible into cash, these advantages are not an addition to salary.

TRAVELLING ALLOWANCES.

An employee is not entitled to claim deductions for travelling expenses incurred for coming to his place of service from his residence (*Rickets v. Colquhoun* (1926) A. C. 1.) Similar views are held in the case of *Cook v. Knott*, 4 T. L. R. 104,—that Directors of the company could not claim deductions for travelling expenses incurred for attending office from residences. Passage money paid to Government Officers is not liable to tax.

Thus perquisites include fees, commissions, allowances and any other remuneration etc., but when these receipts do not fall within the ambit of section 4, cl. 3, sub-section VI, these are taxable.

When an employee gets a fixed salary plus commission, such commission is an addition to his salary—*Macdonald v. Shand* (1923) A. C. 337, 8 T. C. 42. In *Parker v. Chapman*, 138 L.T. 729, it is held that where an employee receives salary and certain percentage of profits by way of commission, whether in cash or by way of newly paid-up shares, it is an addition to salary.

But where an unpaid secretary of a company in liquidation is appointed and the Directors resolve to give him a remuneration from the sum of money to be distributed amongst the shareholders, the receipt is not taxable—*Corrins' Case* (1920) 7 T. C. 372 C. A.

In *Hornet's case*, 10 T. C. 454, it has been held that a lump sum payment over and above remuneration to the Directors of a private company is taxable.

A person is given a first class travelling allowance for his services and position but he makes some profits out of it by travelling in Inter class, still it is not a perquisite but is exempted under section 4, cl. 3, sub-cl. VI.

REFUND.

Section 18 enjoins that any person responsible for paying any income chargeable under head (salaries) shall, at the time of payment, deduct income-tax on the amount payable at the rate applicable to the estimated income of the assessee under this head.

This procedure of deduction at source may sometimes result in higher or lesser deductions, as the case may be, and there is a provision under section 18 for adjustment of any excess or deficiency arising out of any previous deduction or failure to deduct.

Persons responsible for deductions at source are the principal officers or rather the disbursing officers.

Where higher deductions are made, an assessee is entitled to apply under section 48 in the prescribed form for the differences in rate. But where an assessee has got higher income *i.e.*, income from any source other than (salaries) the income-tax officer is to ask him to file his return of total income under section 22, cl. 2; then to proceed according to the provisions of law. Of course, the amount deducted as income-tax should be adjusted and shown in the notice of demand.

RECEIVER.

Where a receiver is appointed of an estate which has got agricultural and non-agricultural income, portion of salary being incurred from non-agricultural property, the assessee is entitled to a proportionate deduction of salary incurred, *In the matter of Sachindra Mohan Ghose v. Commissioner of Income-Tax, B & O*, 136 I. C. 63 : A. I. R. 1932 Pat. 102.

SALARIES OR NOT.

In the case of *Mahiuddin Ahmed*, 27 Cal. 674, it was held that where income is received by the superior of a Khankha (a kind of monastery), such income was not salary within the meaning of section 7, but was an agricultural receipt within the meaning of section 4.

The Trustees of Colonial Bishopric Fund made an allowance of certain sums to the assessee in view of his position as Lord Bishop of Lucknow. The sum he receives in addition to his pay was payable to him and was paid in London. This was a gratuitous payment, on condition that the payment was to be made to the person who occupied the position of Lord Bishop of London. It was held that it came within the meaning of section 7, cl. 1 and it arose in British India; for if the assessee chose to give up his appointment and to go to England, he could not get the sum—*In the matter of Rt. Rev. C. J. G. Sanders, Bishop of Lucknow*, A. I. R. 1932, All. 151.

Transfer to the trustees of the shares of an employee at the termination of his employment was not a payment, perquisite or profits thereunder received by the employee, in addition to his salary or wages which were paid by or on behalf of the company within the meaning of section 7 of the Act.—*Commissioner of Income-Tax, Burma v. Rangoon Electric Tramway Supply Co. Ltd.*, 142 I. C. 240, A. I. R. 1933. R. 45.

The scheme of the Indian Income-tax is not upon potential but on actual profits. The interest paid by the company on the contributions which the company makes to the provident fund is a perquisite in addition to salary or wages. It is a receipt accruing to the members of the Provident Fund by virtue of their being in the service and necessarily it falls within section 7, cl. 1.

Chief Justice Page observes—"In my opinion upon a true construction of section 7, cl. 1, unless & until salary has been received by the employee and has been paid by the company to him, such salary is not assessable to income-tax". "Further, he holds : in my opinion, upon a true construction of section 7, cl. 1, Income-tax Act, as and when the interest of the company's own contributions to the Provident Fund is paid by the company and received by the employee, the sum so paid is 'salary' within the meaning of the term as used in section 7, cl. 1, of the Income-tax Act"—*In the matter of Rangoon Electric Tramway & Supply Co. Ltd.*, 142 I. C. 240.

DESTINATION OF PROFITS.

Whenever any salary, wages, pension or annuity, etc. are paid, by or on behalf of Government, a local authority, a company, or any other public body or association or by or on behalf of any private employer, it must be held that the sum is chargeable irrespective of its destination whether within local limits or outside British India. In *Bijoy Singh Dudheria* A. I. R. 1930, Cal. 644, it was held "prima facie destination of profits is irrelevant. A portion of salary attached under orders of a court is also taxable."

Diversion of profits under this section does not confer any advantage to the assessee, who will be taxed on the gross receipt. No deductions are permissible under head "salaries" but the assessee is entitled to abatement for premiums paid for Life Insurance and Provident Fund contributions up to one-sixth of his total income. Deductions are not allowed under head "salaries" as the assessee is to exercise his intellect and expense if any is to be regarded as personal.

PERQUISITES.

The term denotes that whenever any benefit is enjoyed by assessee which is neither money nor capable of being converted into money. Such benefit is a 'perquisite' in the real sense of the term. The explanation under section 7, clearly provides that the right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purpose of this sub-section. But as a matter of practice, by an executive fiat, it has been arranged that when an employee enjoys the privilege of a rent-free quarter, the money value shall not be taken at more than 10% of the salary of the employee.

Payments in kind, from residence, board and similar items are not assessable unless there is an obiter or possibility of turning them into cash. (*Tenant v. Smith* 3 T. C. 152). But under the Income-tax Act, rent free quarter is a 'perquisite' within the meaning of the section 7(1). The explanation

portion makes it specifically taxable. Each case will be decided on the actual facts and circumstances of the case. When the use of residence rent free is available but there is a right to let the premises and live elsewhere, the annual value of the house will be assessable as part of the remuneration of the office in question, but where there is no such right, the value will be excluded.

The above English principle is inapplicable in India so far as rent-free quarters are concerned.

Similarly allowances made in lieu of board, uniform etc. are assessable, with a right in proper cases to have necessary expenses deducted; but when board etc. is provided but a deduction from salary is made in payments, therefor, the question as to whether the gross or the net amount of the salary will be assessed, will depend largely upon whether the amount is voluntary or compulsory on the part of the employee concerned.

8. The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Government of India or of a Local Government, or on debentures or other securities for money issued by or on behalf of a local authority or a company :

Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of commission by a banker realizing such interest on behalf of the assessee :

Provided further, that no income-tax shall be payable on the interest receivable on any security of the Government of India issued or declared to be income-tax free :

Provided, further, that the income-tax payable on the interest receivable on any security of a Local Government issued income-tax free shall be payable by that Local Government.

INTEREST ON SECURITIES.

The interest chargeable under this section is the interest only on securities of the Government of India or of a local government or on debentures or other securities for money issued by or on behalf of a local authority or company. It does not include interest on debentures issued by firms, asso-

ciations, clubs or individuals, interest on which is chargeable under sec. 10 or 12.

With reference to the first proviso the Government of India War Bonds 1920, 1921, 1922, 1923 1924, and 1928, 5 per cent. loan 1945-55, Five year 6 per cent. Bonds 1926, Five year 6 per cent. Bonds, 1927, Ten year 6 per cent. Bonds 1930, Ten year 6 per cent. Bonds 1931, Ten year 6 per cent. Bonds 1932 and Ten year 5 per cent. Bonds 1933 have been issued income-tax free.

The second proviso to this section prescribes that where a local Government issues a security as income-tax free, the income-tax on the interest thereon shall be payable by that local Government. So far as investors are concerned, therefore, securities issued income-tax free, whether by the Government of India or by local Government stand on exactly the same footing, that is, income-tax is not payable on the interest received therefrom by the assessee, but the interest received therefrom is taken into account under section 17 (1) of the Act in determining the total income of the assessee for the purpose of deciding whether he is liable to income-tax and also for determining the rate at which he shall pay income-tax on his other income. The same remarks apply to Government securities purchased through the Post Office and held in the custody of the Accountant General, Posts and Telegraphs (*see* paragraph 17). Super-tax is, however, payable by the recipient in respect of such interest, since, under section 58 of the Act, the provisos of this section do not apply to super-tax.

For interest on other securities, which are entirely exempt from tax, *see* paragraph 17(8), (9) and (29).

For interest on securities held by Provident Fund etc., *see* paragraph 21.

The interest on securities held by a Co-operative Society is liable to income-tax, *see* paragraph 17.

Where a bank or other concern engaged in business similar to that of a bank receives deposits or loans in the course of its business and invests the money so borrowed as occasion arises, it should be allowed in computing its liability to income-tax to set-off the entire interest on such borrowing against its entire income liable to tax. No attempt should be made, for example, to allocate a proportion of the borrowed money to investments in tax-free securities and to set-off the interest on such proportion against the tax-free securities instead of against the taxable income.

But (as an exception to the foregoing) in rare cases in which there is definite proof (not a mere inference) that

a certain sum was specially borrowed by a bank or similar concern for the purpose of investment in tax-free securities and has been so invested, the interest on the money so borrowed should be set-off against the interest on the tax-free securities and not against the income liable to income-tax-

Assessees other than banks or similar concerns may set-off interest on money borrowed specifically for investment in taxable securities or shares and so invested, against their income liable to tax taken as a whole and not merely against the interest on such securities or the dividends on such shares. In all such cases there must be clear proof and not a mere inference that the money was specifically borrowed for such investment and actually invested. They cannot be allowed to set-off against their income liable to tax interest on money borrowed for investment in tax-free securities and so invested.

Income-tax (but not super-tax) in respect of income chargeable under this head is deducted at the source. (Para 28 of I. T. M.)

CASE LAWS.

It has been held in 32 C. W. N. 242 that the amended Act of 1922 is not retrospective.

COST OF REALISATION.

If deductible. In *In the matter of Rajniti Prosad Singha*, 123 I. C. 611 : A. I. R. 1930, Pat. 33 it has been held that cost of realisation of interest from securities cannot be deducted. Tax is chargeable on all interests received from securities and as such no allowance for commission is allowable : *In the matter of A. H. Forbes* 119 I. C. 402 : A. I. R. 1929, Pat. 429. This draws a distinction with collection charges for money invested elsewhere, inasmuch as such collection charges are permissible deductions. The recent amendment allows banking interest by way of deductions.

CO-OPERATIVE SOCIETY.

In the case of *Madras Central Urban Bank Ltd.*, 118 I. C. 107 : A. I. R. 1929 Mad. 387 : 56 M. L. J. 431, it was held that where a co-operative society invests fluid assets in Government securities through Government orders the income arising therefrom is assessable as such investment and is no part of their business.

ANNUITY FOR MAINTENANCE.

Where an annuity is paid by an assessee in pursuance of a decree of the court, the amount so paid cannot be a deductible expenditure : *In the matter of Bejoy Singh Duikhuria*, 57 Cal. 918 : A. I. R. 1930 Cal. 641 : destination of profits has got nothing to do with assessment.

PAYMENT OF INTEREST.

Where interest is paid by an assessee and the amount is borrowed by a private person such payment of interest is not deductible. *In the matter of Mahadeo Asram Prosad Shahi Bahadur*, 100 I. C. 897 : A. I. R. 1927 Pat. 133. Where creditors are not partners, 'loan, secured through others, is not a boon incurred by the partners.

BUSINESS PREMISES.

It is more or less concerned with the properties of the nature of residential house ; but business premises, namely shops, godowns, and office are not include in the term "house property" : *In the matter of Row & Co. v. Secy. of State*, 67 I. C. 781. There cannot be any valuation of a business premises which is exempt from assessment.

*Securities—definition of:—*The Indian I. T. Act nowhere defines the term ; but "security" obviously connotes a debt or claim secured by way of mortgage, pledge or charge, *e.g.*, war bonds etc.

DEBENTURES.

Debenture though not defined under the I. T. Act covers cases, *e.g.*, (1) simple acknowledgment under seal of a debt, (2) "an instrument acknowledging the debt and charging the property of the company with repayment, (3) an instrument acknowledging the debt and charging the property of the company from giving any prior charge, as per L. J. Bowen in *English and Scottish Trusts v. Brunton*, (1892) 2 Q. B. 700.

ALLOWANCES u/s 8.

Section 8, before the Second Amendment Act virtually conferred no deduction under this head to an assessee, although u/ss. 9 and 10, various heads of reliefs are allowed. When interest for securities are realised, costs incurred if any, could not be allowed—*In the matter of Rajniti prosad Singha v. Commr. of I. T. B. & O.*, A. I. R. 1930 p. 37. In *Mahadeo Asram prosad v. Commr. of I. T. B. & O.* A. I. R. 1927 Patna 133 we find that deduction under the head "securities" is not allowable ; even in the case of *A. H. Forbes v. commr. of I. T. B & O*, 4 I. T. C. I.=A. I. R. 1929 p. 419, we find that the tax is to be levied on the entire amount of interest, receivable by him and commission if any, paid to a banker for realisation cannot be allowed.

But the Amending proviso removes a long-felt grievance ; u/s 8, tax is payable in respect of interest on securities which are not declared to be I. T. free. The Amending Act provides that no income-tax shall be payable in respect of any sum deducted from such interest by way of commission by a

banker realising such interest on behalf of the assessee. The proviso is intended to allow commission paid by an assessee to a banker for the realisation of interest on securities to be treated as an admissible deduction against the interest so realised.

DEPRECIATION.

But loss arising from depreciation in the value of Government Securities kept as emergency Reserve by a Bank is not an allowable deduction—*In re Tata Industrial Bank Ltd.*, A. I. R. 1922 B. 75=1 I. T. C. 152; vide also the *Punjab National Bank v. Crown*, A. I. R. 1926 L 373, where the assessee Bank, purchased high class securities not for trading but for emergency reserve and claimed depreciation. It was held to be a capital loss.

Holder of securities if can be assessed u/s 10 :—But where securities are bought and sold as a matter of business within the meaning of section 10, then all the rights and liabilities u/s 10 will automatically follow and the assessee will be entitled to all reliefs mentioned in section 10.

A person who deals exclusively in shares and securities, is to be assessed u/s 10—the business of a Stock Jobber.

Assessibility of profits made by conversion of securities :—The question that arises is, what constitutes “accrual” or “realisation” of income. In *Westminster Bank v. Osler* (1932) I. K. B. 668, instance is forthcoming when the learned Judges of England found it difficult to decide whether there was a “realisation” of profits. Where there is a mere appreciation, in the value of securities, held by a business house, it is settled that there is no “accrual” of income upon which tax could be levied.

But suppose a Bank converts one kind of securities e.g. war bonds into securities of a greater value, war loan or conversion loan, is there a “realisation” of profits? After great hesitation the courts of Appeal in England have held that in such cases there is a realisation where the change of investment is made.

DEDUCTION AT SOURCE AND REFUND.

Section 18 mentions that payments of interest on securities shall be deducted at source at the maximum rate when payment is made although there is no provision to deduct supertax at source.

Thus interests on Government Securities shall be deducted at the maximum rate prevalent when the interest is drawn; but of course u/s 48 he is entitled to claim refund provided he has got no taxable income or that the rate of tax applicable

to this case is less than the rate at which income-tax has been charged in making such deduction in that year. He shall be entitled to a refund on the amount of interest or salary from which such deduction has been made calculated at the difference between those rates.

INCOME-TAX FREE SECURITIES.

When a local Government issues a security as income-tax free, income-tax on interest thereon shall be payable by such Government. The result is that the interest thus received is not chargeable to income-tax, but it is taken into account in computing the total income for the purpose of determining whether he is liable to tax or to determine the rate at which he shall pay his income-tax on his other income.

CO-OPERATIVE SOCIETY & GOVERNMENT SECURITIES.

By virtue of section 60 of the Indian Income-tax Act the Governor General in Council by notification dated the 25th August 1925 did not exempt interest derived by a Co-operative Bank from its investments in Government securities and such interest is not to be regarded part of the profit of the business of the Bank. The exemption from Income-tax given by the notification of Government of India dated the 28th August 1925 is to the profits made by the Bank from its business of a Co-operative Bank only.

In the *Madras Central Co-operative Bank Ltd.*, A. I. R. 1929 M 387 it was held that the investment of fluid assets could not be held to be part of a bank's business and hence liable to tax.

The Madras Provincial Co-operative Bank v. Commr. of Income-tax, Madras, A. I. R. 1933 M. 489 (Special Bench) relying on the above decision held that notification of 1925 does not help the bank [*Norwich Union Fire Insurance v. Megee* (1896,) 3 T. C. 457; *Liverpool and London Globe Insurance Co. v. Bennet*, (1913) A. C. 610 distinguished]. A question of far-reaching importance was decided in *Madras Provincial Co-operative Bank Ltd.*, 64 M. L. J 640. Under the Government of India Notification of 1925 "Profits of any Co-operative Society" are exempted from Income-tax. It was contended that interest derived by a Co-operative Society from Government Securities was "profits" within this Notification and therefore not taxable. While rejecting the contention, their Lordships held that interest from securities should be assessed u/s 8, while the profits to be assessed u/s 10. "Profits" as u/s 10 are exempted from tax. The fact that the society by virtue of its bye-laws made "purchase and sale of Government Securities" as one of its objects does not improve matters. *Bardswell J.* said that the exemption is

meant as an encouragement to the employing of as much capital as possible for the financing of co-operative societies and so extending the scope of co-operation. Investment of money in Government Securities does not further the cause of co-operation but it is only a means of keeping from lying idle funds that cannot immediately be used for such a purpose.

Similar views are expressed in the case of *Commr. of Income-tax, Burma v. Bengalee Urban Co-operative Society Ltd.*, A. I. R. 1934 R. 27. Under the Notification of Government of India dated the 25th August 1925, the profits accruing to a co-operative society are exempted from income-tax.

"It appears to me that the intention of the Governor General in Council was to exempt from the income-tax under the notification the profits accruing to co-operative society upon the ground that a man cannot make loss or profits out of himself"—per Buckley L. J. in *Carlisle and Silloth Golf Club v. Smith* (1913), 3 K. B. 75, See also *Gresham Life Assurance v. Styles*, 67 L. T. 497, *New York Life Assurance v. Styles* (1889), 14 A. C. 381, *United Service Club Ltd. of Simla v. Emperor*, 61 I. C. 886 and *Board of Revenue v. Mylapore Hindu Permanent Fund*, A. I. R. 1923 M 684—in this way to encourage and foster Co-operative Societies which are brought into being as the result of a move to improve the conditions under which the cultivators of the land in India and Burma lived and worked. Co-operative undertakings have always been held liable to pay income-tax upon the income derived from investments and house property, see *Commr. of Income-tax v. National Mutual Life Association of Australasia*, 13 I. C. 555.

9. (1) The tax shall be payable by an assessee under the head "Property" in respect of the *bonafide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of his business, subject to the following allowances, namely:—

- (i) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value;
- (ii) where the property is in the occupation of a tenant who has undertaken to bear the cost

- of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one-sixth of such value;
- (iii) the amount of any annual premium paid to insure the property against risk of damage or destruction;
 - (iv) *where the property is subject to a mortgage, or other capital charge, the amount of any interest on such mortgage or charge; where the property is subject to a ground rent, the amount of such ground rent; and where the property has been acquired with borrowed capital, the amount of any interest payable on such capital and not specifically charged upon the property itself;*
 - (v) any sums paid on account of land-revenue in respect of the property;
 - (vi) in respect of collection charges, a sum not exceeding the prescribed maximum;
 - (vii) in respect of vacancies, such sum as the Income-tax Officer may determine having regard to the circumstances of the case :

Provided that the aggregate of the allowances made under this sub-section shall in no case exceed the annual value.

(2) For the purposes of this section, the expression "annual value" shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year :

Provided that, where the property is in the occupation of the owner for the purposes of his own residence, such sum shall, for the purposes of this section, be deemed not to exceed ten per cent. of the total income of the owner.

PERSON DEALING EXCLUSIVELY IN "PROPERTY."

Where a person deals exclusively in "property" alone, difficulty arises whether such a person should be assessed u/s 9

or u/s 10 of the Act. The common sense view is to assess u/s 10 (as dealers in shares and securities are assessed u/s 10 and not u/s 8) but the weight of authority is against such a procedure and the contention that as he has a business only in property, assessment can be made u/s 10, cannot prevail at all. The Calcutta High Court in the case of *The Commercial Properties Limited v. The Commissioner of Income-tax, Bengal*, 32 C. W. N. 413, held that the owner of property cannot be assessed u/s 10. Chief Justice Rankin observes : "The income of the assessee is income derived from its ownership of buildings and their curtilages. To obtain such income a certain amount of management is always necessary but the Act does not regard such income as profits of management. To own house one must buy or build them but the Act does not regard such income as profits of investment."

Section 9(1) puts a limit to the definition of the term property and is applicable to assesses who are owners of properties and necessarily a lessee is not chargeable u/s 9 but u/s 12. It may be pointed out in this connection that an assessee who is assessed u/s 10 is entitled to the largest number of allowances, while u/s 9 he is only entitled to limited allowances.

BONAFIDE ANNUAL VALUE.

An assessee is assessed u/s 9 not on any actual rental or cash received but on the bonafide annual value of the property. The Income-tax officer cannot assess him on the rental received, he has no discretion in the matter. The bonafide annual value means the full market value at which the building would be let from year to year irrespective of any charges by way of Municipal rates or taxes thereon.

The term annual value must be taken to be what the tenants are consistently paying to the landlord, the figure representing the sum for which property might reasonably be expected to let from year to year. *In re: Chinnamal Salagram*, A. I. R. 1931 L. 320. Where a house is let out on a nominal sum out of love, he shall be assessed on the annual value simply because the assessable value is notional. *In Re: Gupta Estate*, A. I. R. 1930 Cal. 1.

The annual value as defined by sec. 2 of section 9, is a hypothetical sum and it is quite possible that the actual consideration paid or stipulated for by the parties in any individual case may be out of all relation to this sum or much inferior as evidence thereof, to the evidence afforded by transactions by other parties in respect of other property more or less comparable in value with the property in question. *Commissioner of Income-tax, Bengal v. Krishna Kumar Sil and another*, 36 C. W. N. 1144, A. I. R. 1932 Cal. 886.

But in determining the annual value, the Income-tax officer must have regard to other facts of the case *e.g.* actual daily rent for each of the stalls. *In Re : Kaladhan Suratee Bazar*, A. I. R. 1931 R. 9.

MUNICIPAL RENT AND ANNUAL VALUE.

The term annual value does not include the municipal tax, which cannot be treated as a rental; it is rather a liability of the landlord and consequently an assessee is not liable to enhanced tax because of the addition of the house tax to the annual value of the property. *In Re : Chunnatal Salagram*, A. I. R. 1929 L. 503, 121 I. C. 508.

The Calcutta High Court in the case of *Krishna Lal Sil v. Commissioner of Income-tax, Bengal*, A. I. R. 1932 Cal. 886, 36 C. W. N. 1144, held that the total consideration which a landlord may reasonably be expected to receive in a particular year from a tenant in respect of a house, is not really a clear profit to the landlord, is an obvious fact, just equitably recognised by the Legislature by providing allowances under several different heads. It therefore does not stand to reason why the municipal tax, payable by the landlord when paid by the tenant, should not be treated as clear profit to the landlord and as such the sums so paid should be added to arrive at the annual value. Where the landlord pays the occupier's tax for the sake of convenience or otherwise, the annual value should necessarily be minus the occupier's tax.

In my opinion where a tenant is to pay municipal tax of the holding besides the monthly rental to the owner of the holding, the tax so paid should be added up with the rental to arrive at the annual figure. But where tax is not levied on the holding, but on the occupier, such a tax should be ignored in arriving at the annual value. An analogy on this line may be given here, where an employee receives salary u/s 7 free of income-tax, the payment amounts to an additional salary. This is in the nature of an appropriation of profits and must be added back. *Ashton Gas Co. v. Attorney General*, 93 L. T. 676.

POWER OF INCOME-TAX OFFICER.

In estimating or arriving at a decision as to the annual value of building, the Income-tax officer is entitled to take into accounts the actual sum expended in the erection of building—*Haveli Saha v. Commissioner of Income-tax, Lahore*, A. I. R. 1933 L. 829, 146 I. C. 550.

OF WHICH HE IS THE OWNER—ABSOLUTE OR LIMITED.

If the assessee is not the owner of the property he cannot certainly be assessed u/s 9. The Calcutta High Court in the

case of *Gupta Estates Limited*, 34 C. W. N. 327, has definitely held that an assessee having a limited interest, say a lessee for fifty years, is not an owner and section 9 is inapplicable.

Although the Act does not define the terms "owner", and "ownership" it cannot be seriously contended that the term "owner" connotes its narrow and technical meaning of the full ultimate and legal owner, but the failure to define it points to its not having been so intended—*Burma Railway Co. v. Secretary of State*, 64 I. C. 801.

The term owner, it seems, is applicable to persons having limited interest under special circumstances, c. g., Gurdian, Trustee, Executors and other legal Representatives and property in their hands can be assessed u/s 9.

The position of a Hindu widow may give rise to some complications. but where a widow has merely a life interest, I think the assessment shall have to be made u/s 9 and it is also reasonable that long term lessee should also be assessed u/s 9 and the Rangoon High Court decision seems to be equitable.

PROPERTY "OCCUPIED BY THE OWNER".

For computing the total income of an assessee u/s 16, the only limitation on taking the full market value is that in cases where the property is in the occupation of the owner for the purposes of his own residence the "annual value" is restricted to a maximum of 10 p.c. of the total income of the owner ; but where the valuation is less than 10 p.c., the lesser valuation should be taken on proofs of such valuation being adduced.

COMPUTATION OF PROFITS AFTER MAKING ALLOWANCES.

As a matter of fact rent paid for the premises where a business is carried on is an allowable item of expenditure but when the said premises are partly used as a business premises and partly used as dwelling house, the computation of allowance shall be less the valuation of the portion used by the assessee as business premises to be determined by the Income-tax authorities. Similarly repairs, if undertaken by the assessee, form admissible deduction. Interest, if any, paid for brought capital is an admissible business deduction u/s 10; but by virtue of the amendment of section 9, sub-section 1 (4) the scope of section 9 has been widened allowing it to run in pari passu with section 10. The amending Act provides that where property has been acquired with brought capital, the amount of any interest payable on such capital, shall form a legitimate deduction u/s 9.

The Income-tax authorities therefore have no discretion to disallow interest payable on such capital raised for acquiring the property.

Section 9, sub-section 1 (4) lays down that where property is subject to a mortgage rather capital charge, the amount of any interest on such mortgage or charge, where the property is subject to a ground rent, the amount of such ground rent; and where the property has been acquired with borrowed capital, the amount of any interest payable on such capital and not specifically charged upon the property itself; interest payable on capital borrowed for the purpose of purchasing lands, are allowable deductions.

Collection charges, land revenue and any insurance against risk of damages or destruction are also deductible expenditures, provided the sum total of the allowances should not exceed the annual value.

INTEREST ON MORTGAGE.

It is now a settled law that an amount of interest due on a mortgage debt but not actually paid is an allowable item of expenditure. Similarly interest payable on borrowed capital raised for the purpose of acquiring property has now become a legitimate deductible expenditure. C. J. Rankin in the case of *Behari Lal Mallik*, 31 C. W. N. 557 observes: “* * * Apart from the consideration that a taxing statute should be construed, if possible, by confining oneself to the ordinary meaning of the words used and that there is special objection to any construction which puts a burden upon the subject when the intention of the legislature to impose it is not clear, I think that sections 9 and 10 of the Act of 1922 must be construed that when the legislature means ‘paid’ it is paid. In section 10 there is a special definition of the word for the purposes of that section. In section 9 certain allowances are authorised by way of deductions from the annual value of the property—itsself a hypothetical figure. The first two allowances have reference to repairs and do not depend upon proof of any actual expenditures. The third and the fourth are expressly made to depend upon what has actually been paid. The sixth is definite only by limit and the seventh is left to the discretion, as regards amount, of the Income-tax Officer. In this context I am of opinion that the absence of the word ‘paid’ in the fourth clause is not without significance. I am not satisfied that the legislature has intended to charge on the basis of the sum which a hypothetical tenant would give save upon the assumption made in favour of the assessee that the real income of an incumbrance is the difference between the yearly value and the interest”. Thus where interest is not paid but is payable, deductions of the entire amount are permissible irrespective of the purpose for which the mortgage has been created.

CHARGE.

U/S 9 (1) (4) interest paid or payable on mortgage is an allowable deduction. The sub-section further states that interest on "charge" is an admissible deduction u/s 9.

The term "charge" has not been defined in the Act. In the Transfer of Property Act we find "when immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property." Charge is created by operation of sections 39, 55 (4), 55(6), 72 and 95 of the Transfer of Property Act. A security bond which does not name the person to whom the money is to be paid does not create a charge—*Mahli Ali v. Chunilal*, A.I. R. 1924, All. 834.

"Charge" may be created in various ways, namely, by act of parties, by will, by operation of law, or by a decree of the court, and not by the ipse dixit of the holder. A charge cannot be created by implications—*Makul Ali v. Ali Akhamad*, 40 Cal. 574. But when a charge is created by document, it must be registered—*Ramanath Kanailal*, 7 C. W. N. 104.

It has been held by the Allahabad High Court in the case of *Basata Lal Thakur Singh v. Commissioner of Income-tax*, U. P., A. I. R. 932, All. 451, that deposit of title deeds with the creditors, relating to property for the purpose of borrowing money for the purchase of extension of property, does not constitute a "charge".

In assessing an impartible estate governed by the rule of primogeniture a question arises whether the allowance to be paid to the junior members are to be regarded as a "charge" on the income so as to bring such allowances within the exemption clause.

The Lahore High Court, in the case of *Kishen Kisore v. Commissioner of Income-tax*, 141 I. C. 417, has held that the rule as to allowances payable to junior members of ordinary Hindu undivided families are inapplicable to an impartible estate and necessarily it has been held that the allowances payable are in the nature of a charge and hence allowable and should be left out of account in reckoning the total income. This distinguishes the case of *Raja Jati Prosad Singha Deo Bahadur*, 130 I. C. 43, where the allowance was held not to be a "charge". The Privy Council decision of *Raja Bejoy Singh Duduria v. Commissioner of Income-tax, Bengal*, 6 I. T. C., 450, 143 I. C. 145, dealt hereafter, reversed the Calcutta High Court decision holding that u/s 3 an "income" is what reaches the individual as income and that the diversion of some

portion to the step-mother is not his income and as such should be left out of consideration. It is not a case of the application by the appellant of part of his income in a particular way; it is rather the allocation of a sum out of his revenue before it becomes income in his hands.

DEDUCTION OF MAINTENANCE ALLOWANCE PAID UNDER A DECREE.

Decrees declaring a charge for maintenance in favour of the person or the property of another are very common in India. Their Lordships of the Privy Council in the case of *Bejoy Singh Induria v. Commissioner of Income-tax, Bengal*, 143 I. C. 145, have made a judicial pronouncement regarding deduction of maintenance allowance paid under a decree. The main point for decision is whether such a decree is effective to create a charge within the meaning of section 9 of the Income-tax Act and whether the amount paid under a decree could be excluded in computing the total income of the assessee. The case is briefly put thus. The assessee succeeded to the family ancestral estate on the death of his father. Subsequently his step-mother instituted a suit for maintenance against him in which a consent decree was made directing the assessee to make a monthly payment of a fixed sum to his step-mother and declaring that the maintenance allowance was a charge on the ancestral estate in the hands of the assessee.

At the time of assessment it was contended that the maintenance allowance should be left out of account in computing the total income of the assessee. The Calcutta High Court disallowed the contention holding that the claim did not fall under any of the exemptions or allowances recognised by the Indian Income-tax Act. The Judicial Committee agreed with this view but reversed the judgment of the Calcutta High Court on the ground that the amounts paid under the decree were not income of the assessee at all. It was held: "when the Act by section 3 subjects to charge 'all income' of an individual, it is what reaches the individual as income which it is intended to charge. In the present case the decree of the Court by charging the appellants' whole resources with specific payments to his step-mother has to that extent diverted his income from him and has directed it to his step-mother, to that extent what he receives from her, is not income. It is not a case of the application by the appellant of part of his income in a particular way, it is rather the allocation of a sum out of his revenue before it becomes income in his hands."

Under section 3, the sum in question is not an income and having regard to the definition of "income" as laid down by the Privy Council in the case of *Messrs. Shaw Wallace and Co.*,

I am clearly of opinion that there has been no "coming in" in this case and necessarily it is not chargeable u/s 3 the main charging section of the Act.

It may not be out of place to mention that the case of *Shiba Prosad Singha v. Crown*, 4 Pat. 73, was decided from a totally different stand point; where maintenance allowance created by a will, was not allowed as deductions as the assessee failed to prove how much was payable out of the non-agricultural income and how much from the agricultural income.

VACANCY ALLOWANCE.

An assessee is entitled to claim vacancy allowance by adducing actual proofs, but such a vacancy allowance must not exceed the amount by which the rent received by him falls short of the annual value. It has been held in the case of *Sreekrishna Chandra Gajapati Narayan*, 91 I. C. 940, that where a house is ready for use and occupation but is not actually occupied by him, the house in question is not vacant within the meaning of section 9 of the Income-tax Act.

Buildings and lands occupied by the owner for the purpose of his business is not taxable. In the case of *Jhon & Co.* 58 I. C. 836, it has been held that the allowance on account of the annual value of business premises owned and occupied by the assessee is not liable to assessment. The provision in section 9(1) (vii) is intended to apply primarily only to those cases in which the house in question is not in the occupation of the owner but is habitually let to tenants and the vacancies are between the different tenancies.

But no allowance is permissible in respect of residential house in fixing their annual value u/s 9 of the Act. *In the matter of Maharaja of Durbhanga*, A. I. R. 1931, Pat. 223.

CANNOT BE A MINUS SUM.

Whatever allowances are admissible under sec. 9, the proviso under it clearly says that the aggregate of allowances made under this sub-section, shall, in no case, exceed the annual value. The necessary corollary, therefore, is that the annual value of property can, in no case, be a minus sum. Section 24 allows set-off of losses, but as the property figure under section 9 cannot be a negative figure there is hardly any scope for setting of loss under this head.

COLLECTION CHARGES AND LITIGATION EXPENSES.

The allowance on account of collection charges must be supported by proof of the actual expenditure, but where proofs were not forthcoming, the Income-Tax Officer has no authority to allow more than 6 p. c. of the annual value. Rule 7 definitely lays down that the allowance must not exceed 6 p. c.

Collection charge under section 9 covers legal expenditure incurred in recovering rents from tenants and such expenses are to be regarded as permissible deductions, subject to the following conditions:—

- (i) Only net legal expenses are to be allowed.
- (ii) The actual expenses incurred in excess of the cost deducted will be allowed in the year in which the decrees are passed.
- (iii) The total allowances for collection charges including legal expenses must not exceed 6 p. c.

LITIGATION CHARGES.

It has been held that collection charges include legal expenses incurred for recovering rents from tenants, just as legal charges are allowed under section 10 for recovering trade debts.

But it must be remembered that amounts spent for employing lawyer and accountants cannot be allowed either under section 9 or under section 10. In the case of *Muniswami Chetty*, 77 I. C. 39, it has been held that costs incurred for employing lawyer to represent income-tax cases do not form a legitimate deduction. Such an expenditure is not allowable even under section 10 as it is not incurred for earning profits.

Money paid to under-writers on the issue of certain preference shares by a company is not a deductible expenditure under section 9 (2 IX), *In the matter of Tata Iron and Steel Company Ltd.*, 64 I. C. 12, 45 Bom. 1306.

EFFECT OF AMENDMENT OF SECTION 9 CL. 4.

Before the amendment, no allowance was permissible for borrowed capital. But with the amendment the scope of allowances under this head has been considerably widened. Section 10 no doubt allows interest paid on borrowed capital, but section 9 made no provision before this amendment.

The present amendment provides, where the property has been acquired with borrowed capital, the amount of any interest payable on such capital and not specifically charged upon the property itself, shall form a legitimate deduction.

The term 'Property' may mean "Land" only and the Income-Tax Officer is therefore bound to allow interest payable on capital raised for purchasing lands alone.

DEPRECIATION.

Under section 10, it is noticeable that the allowance under head "depreciation" for wear and tear is an allowable deduction. But when an assessment is made under section 9, depreciation allowance cannot be granted: for the Legislature nowhere says that a tenanted house can claim depreciation.

Section 10 allows relief where the property is used for business purposes only and nowhere else.

SALE OF PROPERTY.

The question whether a particular amount received is of the nature of annual profits or gains or is of a capital nature does not depend on the languages in which parties have chosen to describe it. It is necessary in each case to examine the circumstances and see what the sum really is, bearing in mind the presumption that "it cannot be taken that the Legislature meant to impose a duty on that which is not profit derived from property but the price of it." *Perrin & Dickinson*, 1 K. B. 107 (1930).

In *Minister of National Revenue v. Katharine Spooner*, 147 I. C. 747 P. C., it was held that royalties were in effect payment by instalments of part of the price of the property, and as there was no question of profits or gain, the royalties were not liable to be assessed to income tax [relying on the decisions of *Commissioners of Inland Revenue v. Marine, Steam & Turbine Company* (1920) 1 K. B. 193., *Commissioner of Inland Revenue v. Korean & Syndicate Limited*, 1 K. B. 598, and *Jhones v. Commissioner of Inland Revenue*, 1 K. B. 711].

DEDUCTION FOR UNREALISED RENT.

"Unrealised rent on any property is exempt from income-tax and is also excluded in computing the total income of an assessee, provided that—

- (a) the tenancy is *bona fide*;
- (b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate, the property;
- (c) the defaulting tenant is not in occupation of other property of the assessee; and
- (d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent". (I. T. Manual, Para 34 A.)

10. (1) The tax shall be payable by an assessee under the head "Business" in respect of the profits or gains of any business carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely:—

- (i) any rent paid for the premises in which such business is carried on provided that when any substantial part of the

premises is used as a dwelling house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional part so used ;

(ii) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling house, a proportional part only of such amount shall be allowed ;

(iii) in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is not in any way dependent on the earning of profits, the amount of the interest paid ;

Explanation.—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause ;

(iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, the amount of any premium paid ;

(v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof ;

(vi) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost thereof to the assessee as may in any case

Provided that—

- (a) the prescribed particulars have been duly furnished ;
- (b) Where full effect cannot be given to any such allowance in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or, if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years ; and
- (c) the aggregate of all such allowances made under this act or any Act repealed hereby, or under the Indian Income-tax Act, 1886, shall, in no case, exceed the original cost to the assessee of the buildings, machinery, plant, or furniture as the case may be :
- (*vii*) in respect of any machinery or plant which, in consequence of its having become obsolete, has been sold or discarded, the difference between the original cost to the assessee of the machinery or plant as reduced by the aggregate of the allowances made in respect of depreciation under clause (*vi*), or any Act repealed hereby, or the Indian Income-tax Act, 1886, and the amount for which the machinery or plant is actually sold, or its scrap value ;
- (*vii-a*) in respect of animals which have been used for the purposes of the business otherwise than as stock in trade and

have died or become permanently useless for such purposes, the difference between the original cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals ;

(viii) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business ;

(viii-a) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission :

Provided that the amount of the bonus or commission is of a reasonable amount with reference to—

(a) the pay of the employee and the conditions of his service ;

(b) the profits of the business for the year in question ; and

(c) the general practice in similar businesses ;

(ix) any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains :

Provided that nothing in clause (viii) or clause (ix) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or assessed at a proportion of or otherwise on the basis of any such profits or gains.

(3) In sub-section (2), the word “paid” means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section.

BUSINESS DEDUCTIONS GENERAL.

While, as stated in paragraph 37, it is not possible owing to the variety of accounting systems, to prescribe exhaustive lists of deductions that are or are not permissible in the case of all businesses, section 10 (2) contains a list of allowances that are permissible in the case of all businesses. The following is a list of the deductions that are not permissible in the case of any business whatever the system of accounting may be that is adopted :—

Reserves for “bad debts” or for “provident” or other funds or any other purpose such as the equalisation of profits or dividends; expenditure of the nature of charity or presents.

INADMISSIBLE ALLOWANCES.

Expenditure of the nature of capital;

cost of additions to, or alterations, extension, or improvements of, any of the sets of a business;

sums paid on account of income-tax or super-tax in India or elsewhere or any tax levied by any authority other than land revenue, local rates or municipal taxes in respect of the portion of the premises only which is used for the purposes of the business.

drawings or salaries of the proprietors or partners;

interest on the proprietors' or partners' capital including interest on reserve or other funds;

private or personal expenses of the assessee;

rental value of property owned and occupied by the owner of a business for the purposes of the business;

losses sustained in former years;

any loss recoverable under an insurance or a contract of indemnity;

depreciation of any of the assets of the business other than the depreciation allowed under section (10) (2) (vi);

any sums paid on account of any cess, rate or tax levied on the profits or gains of any business or assessed at a proportion of or otherwise on the basis of any such profits or gains;

any expenditure of any kind which is not incurred, or incurred solely for the purpose of earning the profits. (Para 40 of the I. T. M.)

BUSINESS DEDUCTIONS IRRECOVERABLE LOANS.

[Section 10 (2)].

Where an assessment is made of profits or income from a

banking or money-lending business, loans which cannot be recovered should be deducted from the assessed profits of such business at the time when such loans can be definitely proved to be irrecoverable. For example, if a banker has lent out 5 lakhs of rupees and received Rs. 50,000 as interest but has during the same year lost an irrecoverable loan of Rs. 25,000 he should be assessed on Rs. 25,000. Similarly if the same banker receiving Rs. 50,000 as interest on his loans suffers a loss of an irrecoverable loan amounting to one lakh during the same year, the income to be assessed to income-tax from the money-lending business in that year will be nil. These examples will apply whether the assessee had previously been assessed to income-tax or not.

This instruction will also apply to the assessment of other traders, where loans have been made in connection with the business and in which the loans are of the nature of the business and the loss is a true trading loss.

The irrecoverable loans in the sense referred to in this paragraph are sometimes confused with the "bad debts" described in paragraph 37, but they are of a totally different nature. Money lent out on interest is the stock-in-trade of a money-lender or banker and the loss of such stock-in-trade can clearly be regarded as a trading loss like the loss of the stock-in-trade of any other trader where the loss is not covered by insurance. In setting claims of this nature the question has always to be considered whether money-lending is, or is not, a part of the business of the trader in question. The investment of savings or occasional loans made to acquaintances cannot be considered to be loans made in the course of trading. (Para 41 of the I. T. M.)

ALLOWANCE ON ACCOUNT OF RENT OF BUSINESS PREMISES.

[Section 10(2) (1)].

The allowance referred to in this clause is only in respect of that portion of the premises in which the business is carried on and the same limitation applies to all allowances relating to premises or buildings in clauses (ii), (iv), (v), (vi) and (viii). Where premises are owned by the owner of the business no allowance of course is permissible since the owner is not liable to pay tax on the annual value of such premises under section 9. Where the trader resides in a part of the business premises, the full rental cannot be set against the profits and the Income-tax Officer must, in each case, determine the portion of the rent that may so be set off. (Para 42 of the I. T. M.)

ALLOWANCES ON ACCOUNT OF REPAIRS OF BUSINESS PREMISES.

Where the assessee is himself the owner of his business

premises, he is allowed as a deduction the amount spent on repairs each year on the portion of the premises used for the purposes of the business under section 10(2)(v); where he is the tenant of the premises, he is, under section 10(2)(ii), allowed the amount expended by him on repairs if his lease requires him to execute repairs. Where the premises are occupied partly as a residence and partly for the purposes of a business, the same proportion of the disbursements on repairs should be permitted to be deducted as is taken in calculating the rent permissible under section 10(2)(i).

The phrase "current repairs" in section 10, sub-section (2)(v) should be interpreted to mean, such repairs required to keep machinery, plant, etc., in serviceable conditions, as are rendered necessary by ordinary wear and tear (as opposed to accidental or wilful damage or other unusual causes) and are of their nature recurrent (supposing that the owner displays reasonable care and prudence in keeping the asset, whatever it may be, in good order) at comparatively short intervals—say, at least, once in two or three years. It also includes minor replacements (in respect of which it would be absurd to expect an entry to be made in a block account or similar record or in any records maintained for the purposes of calculating depreciation) and also mere adjustments of existing parts.

Expenditure on anything that, if it had been done when the asset was new, would have increased its capital value should be regarded as capital expenditure. (Para 43 of the I. T. M.)

BUSINESS ALLOWANCE IN RESPECT OF BORROWED CAPITAL.

[Section 10(2)(iii).]

The allowance under this clause can only be given where payment of the interest is not in any way dependent on the earning of the profits. It cannot be allowed, therefore, in respect of any borrowings the interest on which is not payable unless profits are earned or the interest on which varies according to the amount of the profits earned. In all cases it will be a question of fact whether the payment of interest is or is not actually dependent on the earning of profits. No allowance can be made in respect of the share capital of companies or of the capital put into a firm by the partners; but a company is entitled to an allowance of the interest paid on its debentures and a firm to an allowance of interest on money borrowed under a mortgage. On the other hand, a firm alleging that it has no independent capital and that it is working only on capital lent by the partners at a definite rate of interest which must be deducted from the earnings of the firm before its profits can be declared, is not entitled to allowance

under this section unless definite proof is given that a particular partner has made a legal loan to the firm, *i.e.*, a loan under an instrument on which he can sue and under which interest at a fixed rate is to be paid to him annually irrespective of the earning of any "profits". Similarly the share of profits given to Mohammedan depositors in lieu of interest on borrowed capital cannot be allowed as a business expense.

PARTNER'S SALARY.

Salaries or commission paid to a partner can, under no circumstances, be treated as a business expense.

No rule has been made under the "explanation" to this clause defining what Mutual Benefit Societies are to have the benefit of the "explanation." It has been found that the "explanation," if applied, is likely to give more trouble to the societies than the present procedure. Executive instructions have, however, been issued that in the case of such societies (which appear to be peculiar to the Madras Presidency) where the taxable income is Rs. 5,000 or under, and where the "shareholders" or "subscribers" reside within the limits of the circle of one Income-tax Officer, the company or society should not be assessed direct to income-tax, but the principal officer should furnish the Income-tax Officer with a list of the amounts paid out to subscribers showing the original subscriptions or capital invested and the interest thereon and the Income-tax Officer should ascertain what particular recipients of these payments are liable to tax and should add the amount of interest that they have received to the income on which they would otherwise have been assessed, that is, he should assess the recipients direct. (Para 44 of the I. T. M.)

BUSINESS ALLOWANCES IN RESPECT OF INSURANCE PREMIA.

[Section 10 (2)(iv).]

The allowances under this clause are restricted to insurance policies taken out against the risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the particular business of which the profits or gains are being calculated and no allowance can be made on account of premia in regard to other insurances. Further, any sums not actually expended on premia but merely set aside by a company or firm as an insurance fund are simply particular description of reserve and no allowance or deduction can be given in respect of such reserves.

The Act does not contemplate the deduction of premia on account of insurance against a loss of profit. If, however, the owner of business elects to claim any such allowance, he should signify his intention to the Income-tax Officer—and if he makes

a declaration in writing, undertaking generally to pay the tax on any amounts recovered from an Insurance Company under any such policy or policies, the allowance will be granted in respect of the premia for any such policies that he may have taken out not more than a month before the date of such declaration or that he may take out subsequent thereto. Where no allowance is asked or allowed in respect of such policy, any sums received from the Insurance Company on account of the policy will not be liable to tax. (Para 45 of the I.T.M.)

ALLOWANCES IN RESPECT OF DEPRECIATION.

[Section 10(2)(vi).]

The allowances permissible under this clause are prescribed in rule 8 and the information that must be furnished in order to obtain an allowance is set out in rule 9. It is only the particular classes of buildings, machinery, plant or furniture mentioned in rule 8 in respect of which the depreciation allowance can be claimed, and the buildings, machinery, plant or furniture for which depreciation allowance is claimed must be used for the purposes of the particular business of which the profits or gains are being computed. No allowance can be claimed on account of depreciation, for example, of any portion of a building which is used as a residence by the assessee. Further, the buildings, etc., must be the property of the assessee. No allowance can be claimed if they are leased from others.

Buildings belonging to the owner of a business and used by him in order to house his employees are buildings used for the purpose of business if the owner charges no rent. If, however, rent is charged, section 9 would apply.

SUCCESSOR CAN CARRY FORWARD DEPRECIATION ALLOWANCE.

The Madras High Court in *Commissioner of Income-tax, Madras v. Messrs. Massey & Co., Ltd., Madras*, have ruled that when a person succeeds to a business, he is entitled to carry forward for the purpose of assessment the unexhausted depreciation allowance in respect of buildings, machinery, plant etc., due to his predecessor in the years previous to the succession. The depreciation allowance due to the successor on account of the buildings, machinery, etc., taken over by him should therefore be worked out on the basis of the original cost to the predecessor and not on the value at which the building, machinery, etc., are taken over by him. 115 I.C. 814.

Depreciation should be allowed on the cost of setting up machinery and plant, that is, the expression "original cost" in section 10(2)(vi) should be held to include the cost of freight, pay of engineer and staff who erect the machinery, put it in

working order, and carry out experiments to test it. The rates of depreciation allowance fixed in rule 8 are fixed rates for the whole of India. Depreciation at those rates must be allowed each year when there are sufficient profits, and only the excess of the depreciation allowance over profits can be carried forward from year to year until absorbed, and this practice must be followed whether the depreciation allowance is adjusted in the accounts of the assessee or not and irrespective of the amount shown in the accounts. It is for this reason that in the form of returns of income prescribed in rules 18 and 19 any amount entered in the accounts of an assessee for the depreciation of any of the assets of the business must be written back as the amount allowed for income-tax purposes is the amount prescribed in the rules and not the amount entered in the books of the assessee. The words "no profits or gains" in proviso (b) to sub-section 2(vi) mean "No profits or gains of the particular business of which the financial results are being computed." That is to say, if an assessee owns two businesses *A* and *B*, and the profits or gains of business *A* are insufficient to cover the full depreciation admissible on the machinery, etc., used for the purposes of business *A*, excess depreciation cannot be set off against the profits of business *B*, still less against income, profits or gains falling under any other "head." The effect of the express provision in proviso (b) in clause (vi) of sub-section (2) of section 10 is that an excess of the depreciation allowance over the profits or gains, etc., does not involve a "loss of profits or gains" within the meaning of sub-section (i) of section 24, but merely the non-payment of an admissible allowance—for which non-payment a specific remedy is afforded by the proviso just mentioned.

This clause provides for the depreciation of furniture, but it may not suit the convenience of particular traders to ask that a depreciation account should be kept up for petty items of furniture and a depreciation allowance on account of furniture should, therefore, be granted only in cases in which it is asked for, in which event the cost of replacement should not be allowed; where such depreciation allowance is not asked for, the cost of replacement should be allowed in the year in which the furniture is replaced.

Whatever depreciation allowances are granted, it will be necessary to maintain an account showing the original cost to the assessee of the plant, the amount of the annual allowance, the amount of the allowances already granted and the balance still to be allowed.

The percentage allowance fixed in the rule for the permanent way of electric tramways only covers cases where the number of car miles per mile of track does not exceed 125,000

car miles per annum. Where the number of car miles per mile of track per annum exceeds 125,000 special terms will have to be made in each case. Similarly special consideration should be given to each case where there are special circumstances such as exceptional gradients, the compulsory use of wood paving, etc., tending to show that the car mileage does not fairly represent the wear and tear of the track. The cost of renewing concrete foundations should be allowed as a trading expense as and when incurred, provided that, if the renewed foundations are an improvement on the old ones, so much of the cost of the renewed foundations as represents such improvement should not be admitted as a trading expense. Amounts received for the old materials, whenever renewals are effected, should be credited against the cost of the renewals, and if the old materials are not disposed of at the time or are used for other purposes, their estimated value should be deducted, subject to adjustment, if necessary, as and when the old materials are disposed of. The percentages fixed for the depreciation of the permanent way are based upon the estimated life of a track from a consideration of the number of car miles per mile of track, and consequently these percentages may vary in connection with the same undertaking. It must be clearly understood that the revision of the life of a track need not necessarily be deferred till the whole track is renewed because it may become clear before that date that revision is necessary either in the direction of increasing or decreasing the average life. As regards the rate for general plant, machinery and tools, all other plant and machinery including workshop tools but excluding loose implements, office furniture and small articles which require frequent renewals (expenditure on which is allowed as a business expense against revenue), should be lumped together and the rate of 5 per cent. depreciation should be allowed thereon in addition to the cost of repairs. No depreciation should be allowed on overhead equipment, i.e., trolley wires and connections: all expenditure on maintenance and renewals should be charged as working expenses, as and when occurred.

The item "Below ground—All to be charged to revenue" in exception (1) under item 6 (Mineral oil companies) B. (field operations), in Rule 8 means that on the plant in question (pipes, etc.) below ground, depreciation is to be allowed at 100 per cent., so that if the profits are insufficient in any year to allow of the full 100 per cent, being written off against them, the balance can be carried forward under proviso (b) to section 10 (2)(vi) of the Act to subsequent years.

No depreciation allowances are granted to railways on account of depreciation of their rolling stock as renewal charges are allowed as business deductions.

An assessee deriving income from a railway or tramway (other than an electric tramway) business may at his option require that in computing the profits or gains of such business the following allowance shall be made in lieu of the allowances specified in clauses (v), (vi) and (vii) of sub-section 2 of section 10 of the Act, namely :

The actual expenditure incurred by the assessee in previous year on repairs, replacements, and renewals of plant, machinery, buildings and furniture which are the property of the assessee. If he, however, has exercised the option referred to above in any year, he shall not be entitled to withdraw that option in any subsequent year without the consent of the Commissioner of Income-tax.

No depreciation allowance can be allowed on professional equipment, *e.g.*, surgical and dental instruments, because as the law stands, depreciation on machinery and plant, etc., can only be allowed in computing income from business, and not under section 11 in computing income from a profession. The cost of replacing (as distinguished from original and additional purchases) such instruments should be allowed as an expenditure under section 11 (2).

As stated in paragraph 40 no allowance can be made on account of the depreciation of the assets of a business other than the particular items mentioned in this sub-clause and in rule 8. No depreciation allowance, for example, is permissible to provide for the amortisation of capital sums paid on account of the purpose of the lease of a mine or for the depreciation of wasting assets such as coal. Depreciation allowances should, however, be allowed for sinking shafts, tramways and sidings in coal mines, which are included in the term "plant".

Where a business of such a nature that the profits derived from it were not previously liable to tax owing to a special exemption conferred either by statute or by notification, or rule having the force of law (examples are Shipping Companies and Indigo Companies), is taxed for the first time, the assessee is not entitled to claim in the first year of taxation, under proviso (b) to section 10 (2) (vi), accumulated depreciation allowances for all the years during which the profits of the business were not liable to tax. But in such cases depreciation must be allowed year by year for the full period of 20 years (or whatever it may be).

Shares and securities held as part of the capital of a business should be similarly dealt with. So long as shares or securities continue to be held by a company, firm or individual as part of his or its capital any depreciation or appreciation in

their market value is outside the scope of the Income-tax Act ; and similarly, when the value of shares and securities so held (for example, the securities constituting the reserve fund of a bank or other company) is realised, the transaction is a capital transaction, and no account should be taken for income-tax purposes of any profit or loss resulting from the sale. On the other hand, where an individual company, or firm habitually uses part of his or its resources in the purchase of securities or shares with a view to obtaining profit on their sale and the subsequent reinvestment of the proceeds, the individual, company or firm is, in altering his or its investments, carrying on a trade for the sake of obtaining profit therefrom, and the profits secured or losses incurred are trade profits or losses which must be taken into account in determining the assessment to income-tax. It will, therefore, always be a question of fact to be decided on the merits of each case whether the changes in investment are of a sufficiently systematic character to constitute the exercise of a trade, but if they are, the profits therefrom are liable to assessment, and an allowance must be made for any losses in calculating the amount of tax payable. (Para 46 of the I. T. M.)

RULE 8.

An allowance under section 10(2)(vi) of the Act in respect of depreciation of buildings, machinery, plant or furniture shall be made in accordance with the following statement :—

CLASS OF BUILDINGS, MACHINERY OF PLANT OR FURNITURE.	Rate	Remarks.
1. Buildings	Percentage on prime cost.	
(i) First class substantial buildings of selected materials ...	2½	Double these rates may be allowed for buildings used in industries which cause special deterioration, such as chemical works, soap and candle works, paper mills and tanneries.
(ii) Buildings of less substantial construction ...	5	
(iii) Purely temporary erections such as wooden structures ...	10	
2. Machinery, Plant or Furniture :— General rate ...	5	The special rates for electrical machinery given below may be adopted, at firm's option for that portion of their machinery.
Rates sanctioned for special industries : Flour Mills, Rice Mills, Bone Mills, Sugar Works, Distilleries, Ice Factories, Aerating Gas Factories, Match Factories ...		6½
Paper Mills, ship Building and Engineering Works, Iron and Brass Foundries, Aluminium Factories, Electrical Engineering Works, Motor Car Repairing Works, Galvanizing Works, Patent Stone Works, Oil Extraction Factories, Chemical Works, Soap and Candle Works, Lime Works, Saw Mills, Dyeing and Bleaching Works, Furniture and Plant in Hotels and Boarding Houses, Cement Works using Rotary Kilns ...		7½
Plant used in connection with Brick Manufacture, Tile Making machinery, Optical Machinery, Glass Factories, Telephone Companies,		

CLASS OF BUILDINGS, MACHINERY, PLANT OR FURNITURE.	Rate.	Remarks.
Mines and Quarries, Tubewell Boring Plant, Concrete Pile Driving Machines ...	10	
Sewing Machines for Canvas or Leather, Motor Cars used solely for the purpose of business ...	12½	
Indigenous Sugarcane Crushers (Kohlus or Belans) ...	15	
Motor, Taxis, Motor Lorries and Motor Buses ...	20	
Ropeway ropes and Trestle Sheaves and connected parts ...	25	
Ropeway structures :—		
(1) Trestle and station steel work	5	
(2) Driving and tension gearing	7½	
(3) Carrier ...	10	
3. Electrical Machinery :—		
(a) Batteries ...	15	
(b) Other Electrical Machinery including electrical generators, Motors (other than Tramway Motors), Switchgear and Instru- ments, Transformers and other Stationary Plant and Wiring and Fittings of Electric Light and Fan Installations ...	7½	
(c) Underground Cables and Wires	6	
4. Hydro-Electric concerns :—		
Hydraulic Works, Pipe Lines, Sluices, and all other items not otherwise provided for in this Statement ...	2½	
5. Electric Tramways :—		
Permanent way :		
(a) Not exceeding 50,000 car miles per mile of track per annum ...	6½	
(b) Exceeding 50,000 and not ex- ceeding 75,000 car miles per mile of track per annum ...	7½	
(c) Exceeding 75,000 and not exceeding 125,000 car miles per mile of track per annum ...	8½	
Cars—Car Trucks, Car Bodies, Electri- cal equipment and Motors ...	7	
General Plant, Machinery and Tools	5	
6. Mineral Oil Concerns :—		
A. Refineries.—		
(1) Boilers ...	10	
(2) Prime Movers ...	5	
(3) Process Plant ...	10	
B. Field Operations.—		
(1) Boilers ...	10	

CLASS OF BUILDINGS, MACHINERY, PLANT OR FURNITURE.	Rate.	Remarks.
(2) Prime Movers	5	
(3) Process Plant	7½	
<i>Except for the following items.—</i>		
(1) Below ground—all to be charged to revenue		
(2) Above ground—		
(a) Portable Boilers, Drilling Tools, Well-head Tank, Rings, etc. ..	25	
(b) Storage Tanks	10	
(c) Pipe Lines—		
(i) Fixed Boilers	10	
(ii) Prime Movers	7½	
(iii) Pipe Line	10	
7. Ships :—		
(1) Ocean—		
(a) Steam	5	
(b) Sail or Tug	4	
(2) Inland.—		
(a) Steamers (over 120 ft. in length)	5	
(b) Steamers including cargo launches (120 ft. in length and under)	6	
(c) Tug boats	7½	
(d) Iron or Steel Flats for Cargo, etc.	5	
(e) Wooden Cargo Boats up to 50 tons capacity	10	
(f) Wooden Cargo Boats over 50 tons capacity	7½	
8. Mines and Quarries :—		
(1) Railway Sidings (excluding rails)	5	Depreciation on rails used for Tramways and sidings, and in inclines where the rails are the property of the assessee, is allowed at 10 per cent, under- item 2 above plant used in connection with Mines and Quar- ries in addition to any depre- ciation allowance on the cost of constructing the Tramways sid- ings or inclines.
(2) Shafts	5	
(3) Inclines	5	
(4) Tramways on the surface (ex- cluding rails)	10	

RULE 9.

For the purpose of obtaining an allowance for depreciation under proviso (a) to section 10(2) (vi) of the Act, the assessee shall furnish particulars to the Income-tax Officer in the following form :—

Description of buildings, Machinery, plant or furniture.	Original Cost.	Capital expenditure during the year for additions, alterations, improvements and extensions.	Date from which used for the purposes of the business.	Particulars (including original cost, depreciation allowed and value realised by sale or scrap value) of obsolete machinery, plant or furniture sold or discarded during the year with dates on which first brought into use and sold or discarded.	Remarks.
1	1A	2	3	4	5

I declare that to the best of my information and belief the buildings, machinery, plant and furniture described in column 1 of the above statement were the property of _____ during the year ended _____ and that the particulars entered in the statement are correct and complete.

Place

Date

Signature

Designation

BUSINESS OBSOLESCENCE ALLOWANCES.

[Section 10 (2) (vii).]

It must be particularly noted that the allowances under this clause can only be given where the machinery or plant becomes obsolete. Where machinery or plant is sold for reasons other than that it has become obsolete, no allowance can be given. Where a machine is sold no allowance can be given if the facts present evidence that the machine is not obsolete.

The amount allowed for obsolescence is, again, calculated upon the original cost to the owner. The amount to be given is the amount of such original cost to the owner as reduced by the depreciation allowances under clause (vi) and the amount for which the machine is actually sold or its scrap value. For example, a machine costing Rs. 10,000 on which a depreciation allowance of 10 per cent of the original cost is admissible is sold after 5 years for Rs. 2,000. The original owner gets Rs. 5,000 for depreciation and nothing for obsolescence as the machine is not scrapped or sold on account of obsolescence. The second owner gets also an allowance at the rate of 10 per cent., and as the cost of the machine to him was Rs. 2,000, his annual allowance is Rs. 200. If owing to its becoming out of date the machine is scrapped useless after three years, then in the year in which it is so scrapped the second owner can claim Rs. 1,400 for obsolescence. No allowance for obsolescence is obviously permissible if the machine lasts 10 years or more. (Para 47 of the I. T. M.)

BUSINESS ALLOWANCES ON ACCOUNT OF DEAD OR USELESS ANIMALS.

[Section 10 (2) (viii).]

The allowance in respect of live stock that has died or become permanently useless to the assessee should be granted whether the live stock is replaced or not. (Para 47A of the I. T. M.)

ALLOWANCE ON ACCOUNT OF RATES OR TAXES.

[Section 10 (2) (viii).]

The allowance under this clause covers only the land revenue and local rates or municipal taxes paid in respect of the portion of the premises used for the purposes of the business. In assessing income from business a local rate or tax which is payable irrespective of whether profits are made or not should be treated as expenditure incurred solely for the purpose of earning profits or gains within the meaning of section 10(2)(x) if the rate or tax is not an admissible deduction under section 10 (2)(viii). No allowance can be given on

account of any other rates or taxes whatsoever. All rates and taxes, therefore, whether levied on the profits of a business or which are charged on the proprietor of a business in respect of anything other than the actual portion of the premises used for the purposes of the business, must be disallowed. (Para 48 of the I. T. M.)

MISCELLANEOUS BUSINESS DEDUCTIONS.

[Section 10 (2) (ix).]

While the Act makes no provision for contributions by employers to private provident funds constituted for the benefit of their employees being deducted in arriving at business income to be allowed as a business expense in all cases where the funds are tax, contributions to such provident funds by employers should be constituted as irrevocable trusts and where no part of the employers' contributions can be recovered by the employers. Where, however, such funds remain in the hands or under the control of the employers, no contribution by the employers can be allowed as a business expense; but in such cases actual payments made to employees leaving the service of the employer should be allowed as a business expense in the year in which such payments are made, so far as such payments are made from the contributions of the employers whether in that year or in preceding years.

The same remarks apply to superannuation funds or reserves for the purposes of providing pensions to ex-employees. Actual sums paid as pensions to ex-employees or to the widow or children of an ex-employee should, however, be allowed as a business expense where the pensionary payment is a fixed or recurring one, but no claims or account of "pensions" should be entertained where the "pensions" are paid to persons who have or who at any time had a share or interest in the business.

Premia paid by an employer to cover the risk of liability to compensate any of his employees for injuries, under the Workmen's Compensation or Accident Insurance Act (VIII of 1923) should be treated as business expenses and allowed under section 10 (2) (ix) as a deduction in assessing income from business.

The following principles should be observed in dealing with claims that *bona fide* expenditure for the welfare of the employees of a business should be allowed as a business expense. No contributions towards expenditure incurred by outside bodies which may benefit the employees of a company or firm incidentally with members of the general public, should be allowed, such as contributions for the support of clubs, recreation grounds, religious institutions, dispensaries, hospitals, schools and the like. If, on the other hand, an assessee main-

tains a school or a dispensary solely for the benefit of his employees, reasonable expenditure on the upkeep of such an institution should be allowed as a working expense. Similarly, expenditure incurred in the maintenance of a conservancy staff employed to keep the surroundings of the dwellings of the employees of a concern in a sanitary condition should be allowed. In no case, however, should any capital expenditure be allowed, such as, for example, the amounts expended on the construction of latrine, drains, water-works or hospitals.

Sums embezzled by an employee are admissible charges against the business of his employer.

Assessee sometimes receive from their constituent payments intended to cover railway expenses, cooly charges, ect., which they have to incur in the course of their business. When payments are made out of the sums and are debited specifically to constituents they may be allowed as deductions from the assessable income, without insisting on strict proof of payment by the production of vouchers, provided that it is reasonably certain that the payments have been made.

RECEIPT FOR CHARITIES BRITTI DHAR-MADA ETC.

Indian traders and businessmen charge their customers or clients a small fee on each transaction—for example so many pies on each bag of some commodity sold—the proceeds of which are supposed to be devoted to various religious, charitable or educational purposes. Such customary subscriptions by clients and customers for religious or charitable (including educational) purposes, and the corresponding expenditure by the assessee, should be left out of account altogether in computing the taxable income, provided that the Income-tax Officer is reasonably satisfied that the sums in question are really applied by the assessee ultimately (and not necessarily in the year of collection) to the object for which they were ostensibly collected. No attempt should be made to separate these subscriptions from the trade expenses of the customers or clients to whom they are charged and to disallow them as not being trade expenses.

Sums received for political purposes should be included as income and the corresponding expenditure on these purposes should not be allowed as a deduction from the taxable income.

AUDIT FEES.

Audit of an assessee's accounts conducted before his return of income is made, where such a return is made on the due date, or within any extended period allowed by the Income-tax Officer for its submission, should be treated as audits conducted for ordinary business purposes, and the expenditure incurred on such audit as an admissible deduction in computing

taxable income, but the cost of audits and similar operations conducted specially for income-tax purposes, whether in connection with assessments, with appeals, or with revision petitions, cannot be allowed as a deduction from taxable profits. [Ruling of the Madras High Court in *Secretary, Board of Revenue (Income-tax) Madras v. Munisami Chetty & Sons*, 47 Mad. 653.]

BUSINESS DEFINED.

Where the exercise of any profession or occupation is carried on with the object of making profits or gains, the transaction is business, pure and simple and is liable to assessment. But Mutual Trading Societies carrying on business are not liable to assessment, *e.g.*, Bar Association, Social Clubs and the like.

INTEREST ON BORROWED CAPITAL.

Capital borrowed in British India for the purpose of business conducted by the assessee in a foreign territory is a permissible allowance under section (2) if such profits or gains of the said business are brought into British India. The assessee does not lose his right merely because he has not brought in British India his foreign profits for the accounting period or for three preceding years in their entirety. In such cases deduction should be allowed subject to the limitation that the amount so set off does not exceed the amount brought into British India and tax in the accounting period: *In the matter of Harakrishna Lal*, A. I. R. 1930, L. 982.

Interest paid in British India for capital borrowed in British India for the purposes of a business, conducted by the assessee in foreign territory, is a permissible allowance, if the profit or gains of such business are brought into British India. This is allowable subject to this limitation that the amount so set off must not exceed the amount brought into British India and taxed in the accounting year—*In re. Hari Kissenlal*, 132 I. C. 833.

DEFINITION OF THE TERM 'BUSINESS'.

Business as defined under section 2, cl. 4 includes any trade, commerce or manufacture or any adventure or concern in the nature of a trade, commerce or manufacture; where in performance of a duty, an occupation or profession is carried on with the sole object of making profits, the transaction amounts to business.

Thus "business" connotes something in the shape of labour and attention for the sole purpose of earning profits—*In the matter of Rogers, Pratt, Shellac & Co. v. Secretary of State*, 52 Cal. 1. Carrying on business can only exist when there is a

succession of acts or a continuity of transactions or acts and the performance of a single act apart from single circumstances is not enough even though it may result in profits or gains—*Smith v. Anderson*, 23 L. T. 329, *Erichsen v. Last*, 46 J. P. 357 and *Wesale & Co. v. Colkuham*, 52. J.P. 644. *In the matter of Commissioner of Income-tax v. Corrimbhui Ebrahim & Sons Ltd.*, A.I.R. 1933. Bom. 422.

MEANING OF ANY BUSINESS & PROFITS OR GAINS.

If any business in section 10 (1) means all the business put together, then the profits or gains will mean the aggregate profits or gains of all the businesses together (relying on the decisions reported in A.I.R. 1924, Madras 474 & A.I.R. 1929 Lahore 566—*In the matter of Subbampettiar & Co.*, 123 I. C. 801.

In *The Commissioners of Inland Revenue v. the Marine, Steam, Turbine Co. Ltd.*, 12 T.C. 174, 1920, 1 K. B. 93, Justice Roulat observes : “the word business however is also used in another and a very different sense, as meaning an active occupation or profession continuously carried on, and it is in that sense that the word is used in the Act.”

In *Smith v. Anderson*, 1880 (15 Ch.D. 247, 258) it is said that business is an occupation for profit. The occupation may be continuous or stray—*Martin v. Lowry*, 11 T.C. 297.

In *South Behar Railway Company v. Commissioner of Inland Revenue*, 12 T.C. 657, it has been held that continuity of activity is not essential, there may be long intervals of inactivity.

PROFITS.

“Profit” means a comparison between the state of business at two specific dates usually separated by an interval of a year and if the company is to be regarded as dealing in house property by letting it out for premium and rent in the course for the purposes of its business the money value to which at the end of the year, it betters its position by such means, will be assessable as profits. If its position is improved by other means from causes not directly connected with the business of the company, the enhanced value, though realised, is not part of the business. Everything depends upon what the business is—*In Re. Gupta Estate Ltd.*, 34 C.W.N. 327.

BUSINESS CARRIED ON BY HIM.

In order to charge the profits of business liable to income-tax, it must be shown that the business is being carried on for the purpose of earning profits. Section 10, cl. 1 puts no limit to space or locality, whereas section 4, cl. 1, sub-cl. 2 provides a limit.

Subject to the limitations laid down under section 4, profits of any business carried on by an assessee are taxable under section 10. For the purpose of taxation, section 4 controls section 10 to a considerable extent and the limitations put under section 4, have been dealt separately under section 4.

But chargability and assessability to tax depend entirely upon the circumstances of each particular case and section 10 cannot be invoked where business is not carried on.

There may be cases where a company goes in liquidation and the liquidator subsequently realises money. The company cannot be said to carry on business—*In the matter of Commissioner of Inland Revenue v. Korian Syndicate Ltd.*, 12 T.C. 181.

In the case of *Executors of E.A. Cohen* 129 L.T. 797, it has been held that where an executor is authorised to realise and administer the estate, and where his action amounts to securing a proper advantage to the testator's estate, such an action does not mean "carrying on business." "It seems to me that the evidence shows that the executors only dealt with the business, only handled the business for the purpose of securing proper advantage to the estate of the testator...Of course, it is largely a question of degree as to whether a business is being carried on by the executors for their own purposes or not". In the *South Behar Railway Company*, 12 T.C. 656, it was held that where a railway company sells away the lot undertaking to acquire and work in consideration of some annual payments the company is said to be carrying on business.

Where there is an absence of repetition of act, business is not carried. A person is entitled to royalties or invention but receipt of such royalties are not business profits unless he invents yearly and sells his inventions—*Inland Revenue Commissioner v. Sangster*. Justice Rowlatt observes: "although I do not see how you can treat his royalties income where it has become a royalty income, as an income from trade or business carried on, it might be said that you could treat this gentleman as carrying on a business of inventing, the profits of which were to be arrived at a different way. It is said that if a man habitually invents, or if a man habitually paints pictures or if he habitually writes books, with a view to gain from the patents which he has taken them out of the books, which he has written and the pictures which he has painted that is carrying on business and I feel a little difficulty about the fact. Very possibly, if a man habitually paints a number of pictures, year after year and sells them, you could say he was carrying on business. He might be a professional man but that is another matter. If he was writing books habitually, year after year, and carrying on

business, I suppose he would be assessable under schedule D for it." But where no evidence is forthcoming as to date of invention of patent etc., and in the absence of any evidence of disposal of articles produced, it cannot be construed that the assessee is carrying on business.

Where a business is closed down but the company is eligible for royalties, it cannot be seriously maintained that as the company exists for receiving royalties, it is carrying on business. The company has closed down its original business and has ceased to function as such, but is only receiving royalties for the business which it has parted with, it cannot be construed that the company is carrying on business within the meaning of the Act—*The Marine Steam Turbine Co. Ltd. v. Commissioner of Inland Revenue*, 12 T.C. 174.

When a consulting Engineer charges fees when consulted, he cannot be said to be carrying on business and the fees received are professional receipts. But suppose where orders for machineries are placed to him and he gets (1) a merchant's profits, (2) consultation fees, for advance. It cannot be said that he is carrying on his profession but carrying on business within his professional skill—*Commissioner of Inland Revenue v. Mark*, 4 A.T.C. 467.

GROWING TEA—WHETHER BUSINESS.

It has been held by the Calcutta High Court that "the earlier part of the operation where the tea bush is planted and the young leaf is selected and plucked may even be deemed to be agricultural. But the latter part of the process is really manufacture of tea and cannot without violence to language be described as agriculture"—per Justice Mukherjee of the Calcutta High Court in the case of *Killing Valley Tea Company v. Secretary of State*, 48 Cal. 161, 11 T.C. 54, 32 C.L.J. 421.

Apparently cultivation of tea bushes is not carrying on business; but the latter part e.g. the manufacturing process is carrying on business.

Section 4 exempts "agricultural income" free of tax and consequently it is held to be not carrying on business, and no liability is attached. Section 2, cl. 1 provides that an "agricultural income" is to be exempt from the operation of the Indian Income-Tax Act where the land is assessed to land revenue in British India.

In *Punuswami Pillai v. Commissioner of Income-tax, Madras*, 31 I.T.C. 378, it has been held that where an assessee has got a tea estate in Ceylon, he is also liable not only for the manufacturing process but is also chargeable for the income derived from the growing process, although it is agricultural

income, Section 4, cl.: 3, sub-section VIII is inoperative to foreign agricultural income.

Rule 23 lays down the procedure to be adopted where income is partly agricultural and partly from business and provides for the separation of industrial from agricultural profits, whereas rule 24 says that "income derived from the sale of tea grown and manufactured by the seller in British India shall be computed as if it were income derived from business, and 40 p.c. of such income shall be deemed to be income, profits and gains liable to tax". Provided that in computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, unless such area has previously been abandoned.

Under section 10, cl. 2, sub-section IX of the Act the only expenditure which can be set off against profits is expenditure incurred solely for the purpose of earning profits but so far as tea estates are concerned, it is fair and equitable to allow as a charge against profits the whole of the cost of the upkeep (e.g. weeding and draining) of extensions of the estate which are not in bearing,

DESTINATION OF PROFITS IF RELEVANT FOR THE PURPOSES OF PROFITS.

Section 10, cl. 1 states that where a business is carried on profits therefrom are liable to tax, so where a "business" is carried on at a profit, it becomes taxable.

The Income-tax Act nowhere provides that liability to tax can be avoided by ultimate disposal of profits. Of course, if any of His Majesty's subjects are clever enough to avoid taxation by legal means, they are at liberty to do so, and there is nothing wrong in so conducting one's affairs within the law as not to attract taxation—*In the matter of Bai Sakinaboo*, A.I.R. 1932, B, 116. The mere fact that the transaction is a device to escape income-tax, ought not to prejudice the assessee. Any subject of the State is entitled to escape paying taxes if he can devise a lawful method of doing so—*In Re Gangasagar* A.I.R. 1929, All, 990, *Mukunda Swarup*, 107 I.C. 435 and also the decided case of *Rajnioti Prosad Sinha v. Commissioner of Income Tax*, B. and O., A.I.R. 1930, page 33.

But the above is a totally different matter. The destination of income, profits or gains is immaterial for the purposes of computation of profits provided it is income, profits or gains to the assessee—*In Paddington Burial Board v. Commissioner of Inland Revenue*, 2 T.C. 46.

In *Mersey Docks v. Lucas*, 2 T.C. 15, it has been held that taxing authorities are not at all concerned how

profits are ultimately disposed of. It is immaterial for whatever purposes the profits are used the destination of profits once earned cannot affect the question of their assessability to tax.

The Calcutta High Court in the case of *Howrah Amta Light Railway*, 32 C. W. N. 757, came to the finding that destination of profits is immaterial.

In *Hudson's Bay Company v. Sterens*, 5 T. C. 168, it was held : "if money is otherwise liable to income-tax, it cannot escape taxation by reason of its being applied to a capital purpose". In *Smith v. Stutton*, 5 T. C. 36, it was held that a salary is none the less a salary because it was applied in a particular manner. In *St. Andrews Hospital Northampton v. Sheers Smith*, 2 T. C. 219, a case of a hospital where profits earned from wealthy patients are applied for the benefit of poor patients and for betterment of hospital the profits are chargeable to tax. Ultimate disposal for charitable purposes does not make any difference.

Excepting what is clearly exempt under section 4 of the Act, the destination of profits is immaterial and even the diversion of profits of cases coming under section 4, for secular purposes, makes the profit liable to tax. It is a common practice amongst Marwaris to set apart a share, e.g. 2 annas, 3 annas or so forth for religious purposes invariably, but the setting apart of a specific share for specific charitable purposes, does not relieve the firm of being taxed on the entire profits. Destination of profits is immaterial.

Where income, profits or gains are withheld at source, the test to be applied is whether there is an effective alienation of income at source, before such income reaches the assessee. In *Bejoy Sinha Dhuduria v. Commissioner of Income-tax, Bengal*, 143 I. C. 145 (Privy Council) Their Lordships hold : "where the Act by section 3 subjects to charge an income of an individual, it is what reaches the individual as income which it is intended to charge. In the present case the decree of the Court by charging appellant's whole resources with specific payments to his step-mother has to that extent diverted his income from him and has directed it to his step-mother, to that extent what he receives from her, is not income. It is not a case of the application by the appellants of part of his income in a particular way, it is rather the allocation of a sum out of his revenue before it becomes income in his hands."

Distribution of Reserve Fund :—All assets and profits of a company belong to its shareholders. A company is liable to tax for profits or gains, if any, whether or not any or the entire dividends have been declared. The shareholders can

declare the profits partially or wholly as dividend, to keep partially or wholly the profits as undistributed or as capital of the company by way of reserve fund.

If the share-holders desire to declare dividends out of the undistributed profits, the dividends would form part of the total income of shareholders, but such dividends will not be taxed again as such dividends being part of the profits of the company were taxed previously. Where distribution of profits accumulated by a company in the form of bonus shares was given to share-holders without any option to have the profit in any other form the bonus shares do not at all represent "income," Profits or gains," to the shareholders. Chief Justice Robinson observes: "In my opinion the transaction must be regarded as a whole, and the obvious intention of the company must be taken into account. There never was and was never intended to be, any payment at all to the shareholders. No amount whatever was taken from the company or received by the shareholders"—*In the matter of Steel Bros & Co. Ltd.*, A. I. R. 1924 R. 327.

In *Linny & Company Ltd, Madras*, 47 Madras, 837, it has been held that where surplus accumulated profits are capitalised without distribution to the shareholders and new shares were issued to the shareholders in the shape of their shares in accumulated profits, such new shares are not taxable.

ALLOWANCE ON ACCOUNT OF RENT OF BUSINESS PREMISES.

Where an assessee carries on his business in a rented house, the rental paid forms a legitimate expenditure. Where the business premise belongs to the assessee, no deduction is allowable for rent. There is, of course, some difference when a substantial portion of the house is used as a dwelling house and the remaining portion as business premises, and the Income-tax Officer may allow proportionate allowance. The use of the expression "substantial portion as dwelling house" leads to the conclusion that where the case is opposite, e. g., where a substantial portion is used as business premises, full allowance ought to be given. The word premises has never been defined. Popularly premises usually means a building, but a colliery is also premises—*In re. Isabela Coal Co.*, 29 C. W. W. 927.

INTEREST ON BORROWED CAPITAL.

Section 10 (2) (3) lays down that interest on borrowed capital is an allowable deduction, provided the payment of interest is not in any way dependent on the earning of profits. This sub-clause may be divided under two main heads: (1) Capital borrowed from outside, (2) Capital borrowed from partners. Of course it does not make the least

difference if the interest is paid on debentures or any other form.

BORROWED CAPITAL FROM PERSONS OTHER THAN PARTNERS.

The guiding rule of allowing interest on borrowed capital is that interest shall have to be paid whether the assessee makes any profit or not; even a condition to the contrary, that interest should be paid on profits alone, is unthinkable and no deduction can be allowed on that score.

Even interest paid in British India for capital borrowed in British India, for the purposes of a business conducted by the assessee in a foreign country, is a permissible allowance, provided the profits or gains of such business are brought into British India. This is permissible, subject to the limitations that the amount so set off does not exceed the amount brought into British India and taxed in the accounting year—*In re. Harakrishnalal*, 132 I. C. 833.

In the case of *The Provident Investment Co. Ltd.*, A. I. R. 1932, B 194, it has been held that interest on money borrowed by the assessee for the purpose of investment in securities outside British India, the interest of which is not liable to income-tax in India cannot be claimed as a deduction from the other income accruing or arising in British India—*Somasundaram Chettiar*, 109 I. C. 369 followed, *Tenant v. Smith*, A. C. 150 *dist.*

In the case of *A. L. A. R. Bros. Devakotah*, 112 I. C. 697, 52 Mad. 296, it has been held that where a firm carries on a banking business with borrowed capital and the amount is invested in a separate branch of piece goods business which is subsequently closed down, interest on capital borrowed, can be deducted in the assessment of the banking business.

TAVANI LOANS

Where loans are taken on the Tavani system, the interest due at the end of each Tavani should be treated as interest paid and added to the principal and no allowance can be granted in respect of Tavani periods not ending in the year of account is 10 (2) (3)—*In Re : Pathu Parmal Chattiyan*, 150 I. C. 485, 143 Mad. 629, *relied on.*

In *Commissioner of Income-tax v. Hazi Jamal Nur Muhammad and Co.*, 1 I. T. C. 396, it is found that the assessee borrowed certain capital from persons known as Mudi Bhagidars on condition that they will get a specified share on profits without being responsible for losses at all. The share paid in lieu of interest cannot be treated as an allowance simply because the payment of specified share depends entirely on the earning of profits, neither it is an expenditure incurred solely for the purpose of earning profits.

PARTNER'S ADVANCES.

When it is alleged that a firm etc. has no independent capital and that it is working on capital borrowed from the partners, it must be held that interest on such borrowed capital is to be allowed for computation of profits. The sole test whether such an allowance is to be allowed or not depends entirely on definite proof of the fact that a particular partner has made a legal loan to the firm. e. g. a loan under an instrument on which he can sue and under which interest at a fixed rate is paid annually irrespective of profits, if any. So far as partner's advances are concerned, a stringent rule has been laid down so that unscrupulous men may not hoodwink the department.

Definite proof of a legal loan is the sole criterion. This does not necessarily mean a loan on an instrument of deed, e. g., handnote, bonds, etc., but it covers cases where money is also advanced on Khattapita accounts. It must be a definite and enforceable agreement. In *Lala Mal for Deo Das Cotton Spinning Mills*, 46 All. 1, 1 I. T. C. 266, the Allahabad High Court has held that the sum paid as interest to partners for capital put into a firm is not an admissible allowance. Such interest represents merely an assignment by reason of special advances of capital made by them in the course of the year. It is said: "the question whether there has been an advance of capital by particular partners or a bonafide borrowing of money by the firm, in which the lender happens to be a partner, in the firm, must be treated as one of fact in each case".

Where capital of a fund is contributed by subscribers, it has been held that the firm was really a company for the purpose of income-tax even though it was not registered under the Companies Act; that the subscribers occupied the position of lenders to the fund of sums of money upon which the firm contracted to pay fixed interest, and that the guaranteed interest was interest on capital borrowed for the purpose of fund's business, and that it would be deducted in computing the profits of the business—*New York Life Assurance Co. v. Styles*, 14 A. C. 381, dist. *Mylapore Hindu Permanent Fund*, 76 I. C. 83 dissented—*In the matter of Madura Hindu Permanent Fund*.

In the case of *Bhola Saha Narasing Das* A. I. R. 1930, L. 738 it has been held that where a partner lends money beyond the initial capital to the partnership, at an agreed rate of interest and the money is used for capital expenditure, the interest paid by the partnership to him in the "previous year" should be deducted in computing the profits or gains of partnership—*Lalamal Hardiodas*, 1 I. T. C. 266 dist., but A. I. R. 1928 Mad. 923 followed. It is worthy of note that in the Madras case to which reference has already been made, dis-

parity was much greater. The initial capital was Rs. 21000 while the amount subsequently lent by the partner was over 500000, and it was held that this circumstance was immaterial.

In *Periassami Nadar*, A. I. R. 1930, Mad. 1003 it has been very rightly decided that where an assessee claims deductions for interest paid on capital borrowed from another individual partner without any agreement whatsoever the interest paid does not come within the purview of section 10, (2) (3) in the absence of any definite and enforceable agreement.

The decision set forth above is clearly distinguishable from the decision in the case of *Subramaniam Chatteray*, 51 Mad. 787 where it has been held that where a partner as partner lends money beyond the initial capital to the partnership at an agreed rate of interest and the money is used for capital expenditure, the interest paid by the partnership to him in the year of assessment must be deducted in computing the profits or gains of the partnership within the meaning of sec. 10, (2) (3). But in the case of *Somosundaram* 109 I. C. 369, it has been held that capital borrowed means capital borrowed and used.

The Rangoon High Court in the case of *K. K. C. C. Chatiar Firm*, 126 I. C. 213 holds that where a partner lends money to the partnership in addition to the initial capital at a reasonable rate of interest and such advance is used for capital expenditure, interest paid on such loan must be deducted—*Lalmal Hurdio Das, dist.*

But where money is borrowed from bank by a private person, as distinguished from a person carrying on business, interest paid cannot be deducted—*Mahadeo Asramprasad*, 6 Pat. 29.

BONAFIDE LOAN OR NOT.

The income-tax officer is entitled to enter into details to determine whether the loan advanced is genuine or not—*Nopechand Muquiram*, 2 I. T. C. 146.

U s 10, (2) (3) of the Income-tax Act, the profits of a business have to be computed after making an allowance of "interest on capital borrowed for the purposes of the business, where the payment of interest thereon is not in any way dependent on the earning of the profits, the amount of interest paid". Whether the interest paid to a partner who has advanced money to his firm is allowable under the head is often a difficult problem. In *Commissioner of Income-tax Bombay v. Tejabai Das Motimal*, 144 I. C. 353, a firm was constituted under an agreement which inter alia provided as follows : the capitalist partner of the first part shall contribute to the partnership Rs. 100000, out of which the partnership shall pay interest on Rs. 94900 at 6% per annum. The balance

of Rs. 5100 shall not carry any interest. The assessee claimed that the amount paid by way of interest to the capitalist partner should be allowed. The Judicial Commissioner of Sind observes: "now there is nothing in sub-clause 3 of section 10, to suggest that interest paid on the initial capital invested in a firm cannot be the subject matter of an allowance. In express words clause (3) provides that only in cases where payment of interest is not in any way dependent on the earning of profits and is paid on capital borrowed, it shall be allowed. When therefore a capitalist partner advances money to the firm on condition that interest would be paid to him, whether the business of the firm results in profits or not, and is in no way made dependent on the profits, if any earned, the firm is entitled to claim an allowance for the interest paid on such capital. It is immaterial whether such capital was advanced as initial capital or subsequently. It is also not possible to draw any distinction between capital borrowed and capital contributed. It is only a different way of expressing one and the same thing. Capital contributed by a capitalist partner is capital borrowed from him by the firm".—*In the matter of Tejban Das Matimal*, 144 I. C. 353.

I think the above decision is erroneous. There is a fundamental distinction between a contribution and a loan. Contribution does not necessarily connote loan and it is not correct to say that capital contributed by a partner is necessarily capital borrowed from him by the firm.

AN ASSESSEE CAN BORROW CAPITAL AD INFINITUM.

The Act says that interest on capital borrowed is a permissible deduction, for the purposes of business. There is absolutely no limit of capital to be borrowed initially or subsequently and the Income-tax Officer has no jurisdiction to disallow interest paid, on the ground that a business of so petty a nature does not justify so much borrowed capital. Evidently he is to satisfy himself if that borrowed capital is for the purposes of business or not.

ALLOWANCES IN RESPECT OF CURRENT REPAIRS.

The phrase "current repairs" should be interpreted to mean such repairs required to keep building, machinery, plant and furniture, in serviceable condition, as are rendered necessary by ordinary wear and tear (as opposed to accidental or wilful damage or other unusual causes) and are of their nature recurrent. The words "current repairs" are practically synonymous with such repairs as are essentially necessary to keep machinery, plant etc. in serviceable condition. It also includes renewals and minor replacements and also mere adjustment of existing parts. This is quite different and distinct from capital

expenditure. Expenditure or anything like that if it had been done when the asset was new, would have increased its capital value, should be regarded as capital expenditure.

In the case of *Ratan Singh*, 50 M. L. J. 157, the point was discussed in details. It is said that if a carburetter of a motor car ceases to function, the renewal of the carburetter in order to enable the car to keep the road must be "running repair". On the other hand if a car as the result of an accident had nothing left but a wheel and everything else had to be renewed, clearly the sensible view would be that a renewal of the car could only be described as an increase of capital. Current repairs are what is commonly known as running repairs which are bound to recur. It is always open to the Income-tax Officer to enquire whether a particular expenditure is current or capital and for this he can look into the nature of the business and the materials used; on the other hand, it is for the assessee to furnish with all necessary informations. Where no such information is forthcoming, the assessee cannot complain at the finding of fact arrived at by the Income-tax Officer. In the case of *Stubbs v. Cooper*, 19 T. C. 29, it was held that whether repairs are really repairs or replacement of capital assets, is a question of degree and as such is a question of fact.

REPAIRS AND RENEWALS.

Running repairs and renewals of premises, plant, machinery, tools, etc. will be allowed, but where the renewal amounts to a complete replacement of assets, such replacement will only be admitted as a charge on the understanding that no wear and tear allowance will be claimed. Moreover only so much of the expense incurred as represents a pure replacement, as distinguished from an improvement, will be allowed. Where capital assets are purchased in a state of bad repair, initial expenditure on putting them in workable order will not be allowed—*In re. Law Shipping Co. Ltd.*, 12 T. C. 621 and *In re. Granite City Shipping Co.*, 13 T. C. 1 and *Naval Colliery Co. v. Commissioner of Inland Revenue*, 6 A. T. C. 351. Amounts spent on making good delapidation at the expiry of a lease will also as a general rule be disallowed. Where new expenditure is incurred instead of repairs being put in hand e.g., where a new shaft or bore is sunk, in place of one which has silted up or become dangerous, costs will be disallowed. *United Collieries Ltd. v. Commissioner of Inland Revenue*, 8 A. T. C. 518.

In contrast to this it may be mentioned that in the case of certain enterprises such as plantations, maintenance and similar expenditures during the period of development such costs may be charged against profits, if any, and will not be treated as capital expenditure—*Valombrosa Rubber Co. Ltd. v. Farmer*, 5 T. C. 529. Brewers may claim expenditure incurred on

repairs to tied houses—*Usher's Wiltshire Brewery Co. Ltd.*
v. *Bruce*, 31 T. L. R. 104.

DEPRECIATION.—MEANING OF.

The Income-tax Act has nowhere defined the term “depreciation.” But the term generally means losses due to wear and tear which can hardly be compensated. It may conveniently be described as wear and tear allowance.

MACHINERY, PLANT ETC.

In the absence of any definition in the Act itself, we can fall back on the definition as given in Stroud. It is said that “machinery” means application of mechanical process for attainment of some particular end by the help of natural forces. It is important to notice, therefore, to what classes of assets, the name of plant and machinery may be given. In addition to what may be termed machinery, pure and simple, such items as turbines, engines, shafting and similar fittings, boilers, vats, ovens and mechanical vehicles of all kinds including shifts, come within the designation, but no loose tools, implements and similar utensils or assets which are mainly in the nature of buildings. Furniture and shopfittings do not come under the heading “plant and machinery”, but in practice a wear and tear allowance is allowed. The allowance does not extend to books, *Daphne v. Shaw*, 43 T.L.R. 45, 11 T.C. 256.

It may be well to state that since the allowance is strictly in respect of depreciation, no claim will be entertained where the machinery in question is lying idle, notwithstanding that deterioration may be going on even more rapidly than when it is fully worked.

DEPRECIATION ALLOWANCE WHEN TO BE GIVEN.

The following conditions are essential for claiming depreciation allowances—

- (1) that the machinery etc. depreciated must belong to the assessee.
- (2) That the machinery etc. must be used for the purpose of the business.
- (3) That the prescribed form of the Central Board of Revenue e.g. Rule 9 must be duly filled up, signed and verified, before the assessment is completed.

DEPRECIATION IF ALLOWABLE WHEN MACHINERY ETC. ARE NOT USED FOR THE PURPOSES OF BUSINESS.

The expression “used for the purposes of business” means used for such purposes during the accounting year and consequently the allowance for the depreciation is inadmissible in respect of buildings, machinery, plant etc., remaining idle and not actually used. Likewise the obsolescence allowance cannot

be claimed in respect of machinery, plant etc. actually discarded in the accounting year—*In re : Radhakishen & Sons*, 3 I.T.C. 73.

The contention that though not used the machinery depreciated from lying idle, cannot be of any assistance. Whether it did so or not, it appears that the allowance is granted not for depreciation as such but for depreciation as a consequence of the earning of income or while employed in the earning of income. Once it is conceded that the machinery in question is lying idle, there is no question of earnings.

An important point arises whether the allowance for depreciation can be given effect to where the machinery etc. does not work for the full period during the accounting year. From a perusal of section 10 (1) (2), it appears that the profits and gains shall be computed after making allowances as scheduled under section 10 (2) in respect of the profits or gains of any business. Of course, no claim will be entertained when the machinery in question is lying idle, notwithstanding that deterioration may be going on even more rapidly than when it is fully worked.

The Act does not say in expressis verbis that an allowance for depreciation can be disallowed or proportionately allowed where the machinery does not work the full period. Similar considerations might prevail in giving allowances under the other sub-section. In section 10 (2) (3) there is a reference to allow proportionate deduction under certain circumstances and in subsection (2) (3) of section 10, there is no provision, express or implied, by which the Income-tax Officer can grant proportionate allowance.

I am clearly of opinion that the Income-tax Authorities can disallow any claim for depreciation, where the machinery does not work in the accounting year at all, but they have no power to disallow any portion of the claim on the ground that the machinery did not work the full period. From the point of equity it can be urged that the term "business" has been defined to include cases where continuity of activity is not essential, there may be long intervals of inactivity—*In re : South Behar Railway Co.*, 12 T.C. 657. When business covers long intervals of inactivity and is still assessed as business, it does not stand to reason why depreciation allowance should be disallowed or proportionately allowed where there has been a partial working of the machinery.

MACHINERY ETC. LET OUT OR LEASED OUT.

The depreciation allowance cannot be claimed where machinery, plant, etc. are leased out or let out. The sole test for granting depreciation allowance is that a property must belong to the assessee at the time of assessment and where it is let out or leased out, the lessor, not being virtually in possession, can

not claim any allowance thereunder ; neither the lessee is competent to put forth a claim, simply because the machinery does not belong to him.

Where a limited company is formed for Rice Milling business and acquires buildings, mill, machinery, plant etc. and subsequently the company leases out the mill at a fixed annual rental up to a fixed period, the lessee undertaking to run the mill and do all necessary repairs the company is to bear all losses for depreciation ; as the company is carrying on rice milling business, it is entitled to claim deductions for depreciation—*Mongalgri Sreeuma Maheswarya Gin and Rice Factory*, 97 I. C. 850.

Where business consists of letting out house property on rent and premium and profits thereof are assessed, the assessee is entitled to claim depreciation allowance on such buildings, machinery and plant etc. as mentioned in section 10 (2) (VI)—*In the matter of Gupta Estate Limited*, 34 C.W.N. 327.

EXCESS DEPRECIATION.

The trend of modern decision is that where profits or gains of a business are insufficient to cover full depreciation, excess depreciation allowance can be set off against profits or gains of other business—*In re : Suppan Chhetiar*, 123 I. C. 801, 4 I.T.C. 211, relying on the decision in the case of *Karam Elliahi*, 116 I.C. 547, 3 I.T.C. 456, where it has been held that depreciation on building and machinery etc, can be set off against gains accruing from other sources.

In *Commissioner of Income-tax v. The Ballarpur Collieries*, 4 I.T.C. 255, it has been held that where a business has resulted in a loss, the assessee can claim that the amount of loss shall be increased by giving depreciation allowance in view of the provisions of section 10 (2) (VI) of the Act.

SUCCESSORS TO BUSINESS.

In *Massey & Co.*, 115 I.C. 814, 3 I.T.C. 302, it has been held that the successor in interest is entitled to carry forward depreciation to which full effect could not be given in years previous to succession, but calculation must be made on the original cost to the company to which it has succeeded and not on value at which assets were taken over by the succeeding Company. *This Madras decision has since been overruled.*

DEPRECIATION ALLOWANCE "ON THE ORIGINAL COST TO THE ASSESSEE."

There has been some conflict of opinion on the interpretation of the expression "original cost" to the assessee, occurring in section 10(2) (vi) of the Act. In the case of *Massey & Co.*, 3 I. T. C. 302, above referred to, it was held that where machi-

nery of one company has been purchased by another company "Original cost to the assessee" does not necessarily refer to the cost to the actual assessee, but means the cost to the Vendor Co. In *the matter of Sarashpur Mills Ltd.*, 137 I.C. 898, the Bombay High Court strongly and in expressis verbis dissented from Messey & Co's. case and was of opinion that the phraseology of the Indian Act differs widely from the English Act upon the question of deduction on account of depreciation of machinery etc. Under the English law it is clear that depreciation must be based on the wear and tear of the machinery, irrespective of the price, paid by the assessee, for it—*Scottish Shire Lines Ltd. v. Lethem*, 6 T. C. 91. But under the Indian Act it is clear that where an assessee succeeds another in business, depreciation allowance in respect of machinery should be calculated on the basis of the cost to the person who is being actually assessed and not the previous owner of the business.

In the instruction portion of the manual we find that when a person succeeds to a business, depreciation allowance due to him in respect of buildings, machinery etc., taken over by him from his predecessor should be worked out on the basis of original cost to the successor (not on the cost to the predecessor.) The same will apply where the person is not a successor but merely a purchaser.

The Patna High Court in the case of *Matiram Rasonlal Coal Co. Ltd.*, 140 I. C. 904, relying on the Bombay decision held that the expression "original cost to the assessee" means the person who is actually assessed.

On principle, I am of opinion that the Bombay decision seems to be better. The real question depends largely on meaning of the term "assessee" in the case of succession. Does it mean "a person by whom income-tax is payable" as defined under section 2, or having regard to the subject or context, the original purchaser of buildings, plant machinery etc. Where the business is transferred to the new assessee, the question is not approached from the point of view in the decision under review.

While no doubt there are obvious differences of language between the Indian Act and the English Act and also the principle of depreciation allowance is a fixed percentage in the Indian Act, it is based on wear and tear under the English Act. The benefit of the unexhausted depreciation allowance is held not to be personal under the English Law and if this is the view of the Indian Act also, it is certainly just and equitable to hold that the cost in relation to which the fixed allowance is granted for depreciation should be the cost to the successor in business, who is the assessee.

A literal interpretation of the term "assessee" does not

curtail and confine the benefit of proviso (2) to previous unexhausted depreciation allowance of the particular assessee and cannot negative the benefit of the allowance itself in a case where there is a testamentary or intestate succession to a business as such.

The Bombay High Court view seems to be the correct view for it depends upon the meaning of the word "assessee". A predecessor in interest cannot be held to be an assessee. An assessee purchases a motor car at a lakh of rupees, he gets the benefits in full for 5 years, on the 6th year he sells it away at Rs. 20,000/-, the purchaser again gets the benefit although it was exhausted. Receipt by way of gift is in the nature of a windfall and a purchase at a higher price cannot be ignored.

The Rangoon High Court in the case of *Commissioner of Income-tax v. Solomon and Sons*, 146 I. C. 242, practically agreed with the Bombay decision by granting the depreciation allowance to the successor who succeeds to the asset, by bequest at its market value at the time of acquisition by way of gift.

Page, C. J. observes: ".....I am satisfied that it could never have been intended by the Legislature, that no allowance should be made for depreciation of buildings, machinery, plant or furniture belonging to the assessee, merely because the assessee had acquired title to the property by bequest and not by purchase. It may be that it is *casus omissus* and there would be force in such contention. In my opinion, however, the intention of the Legislature in using the words 'the original cost thereof to the assessee' was that the owner to be assessed, should not receive an allowance for depreciation, based on a capital value of the property higher than or different from the value of the property to the assessee at the time when he originally acquired it. No doubt, if the assessee purchased the property, the best evidence would be the price that he paid for it, but where, as in the present case, the assessee acquired the property otherwise than by purchase, in my opinion, 'the original cost thereof to the assessee' means and is the real value of the property at the time when the assessee acquired it, less the expenditure necessary for the purpose of completing the title".

There is no fundamental misconception as to the meaning of the terms "cost" and "value" and it may be contended that the "original cost" is the value of the asset at the time, the bequest took effect.

Depreciation of "Securities" In *In the Tata Industrial Bank Ltd.*, 1 I. T. C. 152, the bank claimed depreciation on war bonds and Securities on Comparison of the market rates,—the claim was disallowed.

If the method of calculation is to be confined to profits of a business, the assessee is bound to maintain year after year, all

appreciation and depreciation—he cannot claim depreciation when the market values fall, without showing the increased value when it actually increases.

In *the matter of the Punjab National Bank Ltd.*, 2 I. T. C. 84, it has been held that when a bank purchases higher class securities not for the purpose of trading in them, but for retaining them as emergency reserve, deduction is not admissible under section 10 or under any other provision of the Act.

Reference is also invited to *Scottish Investment Trust Company v. Forbes*, 3 T. C. 231, where claim for depreciation was disallowed.

CAPITAL ASSET.

Depreciation charges on account of the exhaustion of wasting assets, such as mineral deposits, quarries etc, will not be allowed—*Coltuness Iron Co., v. Black*, 1 T. C. 287.

Provision to meet depreciation of capital asset is not permissible—*Norval Colliery Co., Ltd. v. C. I. R.*, 12 T. C. 1017.

Similar views have been expressed in the matter of *Edinburgh Southern Cemetery Co., v. Kinnmont*, 2 T. C. 516. In the Case of *Commr. of Income-Tax, Burma v. K. A. R. K. Firm*, A. I. R. 1934, R, 1, it was held that the sum was not a trading loss, but was only the estimated depreciation of the value of assets of the firm based upon a revaluation of such assets made for the purpose and on the occasion of the reconstruction of the firm.

MOTOR CARS.

For the purpose of allowing depreciation, the life of motor cars, is taken at five years under the Income-tax rules. The I.T.O. is bound to maintain depreciation account as required under the rules, no matter whether it is claimed or not. *Gort. Mail Motor Service*, 136 I.C. 707.

OBSOLETE—MEANING OF.

The expression “obsolete” in section 10 (2) (VII) includes cases of unfitness, arising from whatever cause, whether it is total destruction on supercession by new invention—*In re : Rathin Sing*, 85 I.C. 478.

“Obsolete” means “out of use, of a discarded type or fashion for the particular purpose for which it was intended and cannot apply to a case, when the machinery remains suitable but there is no occasion for its use.”

“Worn out, degenerated or out of date as machinery for the purposes for which it was originally installed.” “Obsolete machinery under the Act means machinery, which though it is

able to perform its function has become in common parlance out of date and performs its functions so indifferently or at such a cost, that a prudent man instead of continuing to use such machinery, would discard it and instal more labour saving machines. In our opinion the word 'obsolete' is quite in applicable to a new car which is wholly useless for its purposes, because it was broken to pieces in an accident."

OBSCOLESCENCE ALLOWANCE.

It is purely a question of fact, inasmuch as whether it is obsolete for the invention of a new machine or whether it is sold, is purely a question of fact—*Ramnadhari Chettiar*, 46 M.L.J. 42.

In the *Swadeshi Cotton Mills Ltd.*, A. I. R. 1929, All. 70, it has been held that where a machine is discarded as obsolete and also because it is beyond repairs and as such the machine is sold after it broke down, section 10 (2) (VII) is applicable as it is obsolete within the meaning of the Act.

In *Gokul Das Mills Ltd.*, 80 I. C. 282, deductions for obsolete machinery were allowed.

But loss, accidental or otherwise, resulting in destruction does not entitle the assessee to claim allowance under this head—*In re : Rathan Singh*, 85 I. C. 478.

It is therefore clear that a claim under this head can only be given effect to, when the machineries are obsolete in its real sense, but certainly it does not justify any allowance for any change of business from one to another.

The Calcutta High Court, in the case of *Sheodayal Jagannath*, 35 C. W. N. 214, held, "where machinery has been sold or discarded not for the reason that employment of newer types of machinery had become necessary, but for the reason that being old and worn out, it could not be worked out at a profit in competition with new machine, obsolescence allowance, such as is provided by section 10 (2) (VI) cannot be claimed."

The above view is based on the line of decision in the case of *South Metropolitan Gas Co. v. Dadd*, 13 T.C. 205. It is said that replacement for diminution in efficiency or because the installation of a new type of machinery will be more profitable, although the displaced article has useful life, does not make the machinery obsolete.

In *in Burnbay S. S. Co.*, 3 T. C. 275, it has been held that when a ship suffers a loss of earning power, being out of date, obsolescence allowance is not permissible.

GENERAL PRACTICE.

A machine may become unfit or unsuitable for the work for

which it was installed by its becoming destroyed (by fire), by its becoming worn out, by a change in the nature of the business carried on, or by its being rendered out of date by the invention of a more efficient machine. It is only when the latter event occurs that the machine becomes entitled to the allowance. The old machine must be fit to do its work, as before, and only put out of use by the fact of its eclipse by a move up to date machine, which makes it unprofitable to continue working the old one—*Evans and Philips, in re*, 4 A. T. C. 20.

There is no time limit for making claims, but it is advisable that the claim should be made before the assessment is completed.

MUNICIPAL TAXES.

Tax on company is allowable inasmuch as the payment of the compulsory levy to the municipality by way of the tax on companies, is not merely for the purpose of the extension of trade, it is a condition precedent to the exercise of the trade at all within the municipal limit.

It therefore stands that payment of company's tax, compulsorily levied on company by the municipality, is wholly and exclusively for the purposes of trade—*In re Nedungadi Bank*, 1 I.T.C. 355. Reference is also invited to *Smith v. Lion Brewery Co.* (1911) A.C. 150, *Ushers' Wiltshire Brewery v. Bruce*, (1915) A. C. 433.

When municipality levies tax on profession, trade etc, the tax so paid is not a permissible allowance, because professional men are taxed not for carrying on their profession but for earning income—this is a payment out of income and not a payment initially for earning profits—*King and Patridge*, 49 Mad. 296 *relying on Ashton Gas Company v. Attorney General*, (1906) A. C. 10.

"INCURRED SOLELY FOR EARNING PROFITS."

Sub clause (ix) lays down that expenditure incurred solely for the purpose of earning profits or gains, is to be allowed. Section 10 provides various reliefs but section 10 (2) (ix) is rather an omnibus clause.

In the case of *J. W. Smith v. Incorporated Council of Law Reporting for England and Wales*, 6 T. C. 484, it was held : "the question whether the money was wholly or exclusively laid out or expended for the purposes of trade must depend upon a knowledge of the facts of the trade, of the way in which it is carried on, of the effect of payment made in that trade, all of which are questions of facts."

In *Strong v. Woodfield*, 5 T. C. 215, it has been definitely laid down that a disbursement to be admissible must be for the

purpose of earning profits only. Disbursement out of profits or in the course of business is irrelevant.

In the case of *Anglo Persian Oil Co. Ltd.*, 37 C. W. N. 434, it was held that money paid by a company in a lump sum to certain Selling Agents as compensation for loss of agency, whereby the company relieved itself of future annual payments, had been held to be not income, profits or gains in the case of selling agents. Payment of such lump sum can still be allowed as a proper deduction from the company's income u/s 10, (2) (ix) as non-capital expenditure incurred solely for the purpose of earning profits or gains.

Section 10 (2) (ix) does not say and does not mean that expenditure must be made with a view to produce profits in the year of account (*In re : Tata Iron and Steel Co. Ltd.*, 64 I. C. 12; *Vallombrosa Rubber Co. Ltd. v. Farmer*, 5 T. C. 529 referred to.)

OTHER CHARGES.

Insurance on account of theft, accident etc. would all be allowed, provided the loss when realised from the insurance company is paid into the profit and loss account.

Losses sustained by a Railway Company in compensating passengers for accident in travelling might be allowed—*Strong and Co. Ltd. v. Woodfield*, 5 T. C. 215.

In *Royal Insurance Co. v. Watson*, 3 T. C. 500 Lord Shand expressed the opinion that damages awarded to an employee for wrongful dismissal would be allowable as deduction. Damages for libel against newspaper proprietor would appear to be loss in the ordinary course of business of proprietors of newspaper—(Pratt and Redman's Income-Tax Law, 10th. Edition)—*Ir re : Rama Swami Chettiar*, A. I. R. 1950, Mad. 808.

TAXABILITY OF AMMOUNT RECEIVED FOR LIBEL TO BUSINESS REPUTATION

Petitioners got an amount in settlement of an action for an alleged libellous injury to their banking business. The Commissioner of Inter-national Revenue ruled that the compensation was taxable as income and his decision was sustained by the Board of tax. On appeal the decision was reversed—*Farmer and Merchant's Bank v. C. I. R.*, 59 F 912 (C.C.A) 1932.

"Income" excludes the concept of return of capital, but what return of capital involves is not always very clear. Good will or business reputation is regarded as an asset, and it follows that should this be destroyed, there would be a loss of capital.

NOT BEING IN THE NATURE OF CAPITAL EXPENDITURE.

"Capital Expenditure" can be defined as one which swells or improves the capital, when such expenditure is not recurrent,

but is incurred once for all, and is opposed to current or revenue expenditure—*Nope Chand Magniram*, 2 I.T.C. 146.

Expenditures may be incurred for initiating business, which can be done by investing capital, by purchasing business, good will etc.

Where business is purchased, the amount spent on that score is capital outlay—*London Bank of Mexico v. Aphorpe*, 2 K. B. 378, *Royal Insurance Co. v. Watson*, 3 T. C. 500 vide also the case of *Roghunandan Prasad Singh v. Commr. of I. Tax*, 4 I. T. C 123.

PURCHASE OF UNEXECUTED CONTRACT RIGHTS.

In the case of *City of London Corporation v. Styles*, 2 T. C. 239, it has been held that the price paid for such contracts cannot be allowed (see also the case of *John Smith and Son v. Moore*, 12 T. C. 266, and also *Allianza Co. v. Bell*, (1906) A. C. 18.

In *Countess Warwick Steamship Co. Ltd. v. Ogg*, 8 T.C. 652 it has been held that where a company secures a contract for the construction of a new ship but owing to heavy slump in trade, the contract is cancelled on payment of £ 60000/-, the entire amount is a capital receipt and hence cannot be deducted—vide also the case of *Devon Mutual Steamship Insurance Association v. C. I. R.* 8 T.C. 671 and also the case of *Giridhar Das Hariballav Das*, 3 I. T. C 83.

PURCHASE OF GOODWILL.

Depreciation of good will seems to be loss of "fixed capital" and it cannot be held to be a loss of the circulating capital and as such it is an admissible deduction—*Wilmer v. M'Namara Co. Ltd.* (1895) 2 Ch. 245.

BUYING OFF COMPETITORS.

In *Alagun Chetty*, 3 I. T. C 44, it has been held that amounts paid by an assessee to keep out a competition in the matter of obtaining contracts, are capital expenditure—*City of London Corporation v. Styles*, 2 T. C 239, and *John Smith and Sons v. Moore*, 12 T. C. 266 referred to.

ADVERTISEMENTS.

Ordinary advertisements are allowable expenditures as incurred solely for earning profits but the case is otherwise where initiation of business by advertisements is made.

In *Gillat and Watts v. Colquhoun*, 2 T. C. 76 Justice Grove says that normal advertisement cost is allowable. "But there must be a limit to the principle."

Reference is invited to *Watney Co. v. Musgrave*, I.T.C. 212, *Granger & Sons v. Gough*, 3 T. C. 462 and *Brickwood v. Reynolds*, 1 B. 95.

ADDITION TO BUSINESS.

Where an Electric Light and Power Company on the security of its total assets, raised a debenture loan of Rs. 6 lakhs required for changing the system of supplying current from direct current to alternating current and for discharging loan, sums of money paid as brokerage, registration and legal expenses for raising the loan, are not allowable—*Nagpur Electric Light and Power Co. Ltd.*, 69 T.C. 29.

Where business is stabilised by the creation of Sinking Funds or Reserve Fund, the amounts spent cannot be allowed, simply because these are capital expenditures—vide *Blake v. Imperial Brazilian Railway*, 2 T. C. 58, and *Collins and Sons v. C.I.R.*, 12 T.C. 773.

General reserves and reserves for capital purpose (debenture, redemption, provision for expiration of lease holds, etc.) will be disallowed.

Reserves for anticipated losses and for expenditure not actually incurred cannot be allowed—*Young v. Commissioner Inland Revenue*, 4 A. T. C. 579 and *Naval Colliery Co. v. C.I.R.*, 6 A. T. C. 351.

COMPENSATION FOR LOSS OF OFFICE.

In each case, liability will attach when the payment in question is in consideration of services rendered and has a cash value.

When, for instance, a lumpsum payment is made in respect of services given over a considerable period of time, the payment is not considered as a capital receipt but as part of the remuneration for the year in which it is made. The position where a lump sum is paid by way of compensation for loss of office, on the other hand, is of a different character and such payments will not attract liability—*Chibbet v. Robinson*, 3 A. T. C. 521.

Whether or not any particular payment is in the nature of a profit arising from the holding of an office, which is the deciding factor, is a question of fact. In *Cowan v. Seymour*, 7 T. C. 372, where a liquidator was paid by the share-holders for his satisfactorily winding up the business, was held by the Court of Appeal not to be any profit of the office but a testimonial for past services and not assessable. It is an admittedly fine line which was drawn in coming to this decision and the fact that the payment arose after the completion of the office was possibly a deciding factor—*Duncon's Executors v. Farmer*, 7 T. C. 417 & *Beynon v. Thorpe*, 7 A. T. C. 190. When a sum of money is given to an incumbent, it accrues to him by reason of his office.

Lump sum payments in lieu of pension or by way of testi-

monial to retiring employees are allowable expenses—*Smith v. Incorporated Society of Law Reporting for England and Wales*, 6 T. C. 477, and *Hancock v. General Reversionary and Investment Co. Ltd.*, 7 T. C. 358. In *Royal Insurance Co. v. Watson*, 3 T. C. 803, it was held that damages paid to a dismissed servant were deductible.

In *Mitchel v. Noble Ltd.*, 11 T. C. 372, it was held that lump sum payment to a retiring Director was a permissible deduction and in the case of the *C. I. R. v. The Anglo Brewing Co. Ltd.*, 12 T. C. 803, it was held that payments of compensation for loss of office to employees and exgratia payment of annuities could not be allowed as not made for the purposes of trade.

It is a case when payment was made after closing down the business and hence the payments were rightly disallowed (Attention is invited to *Turner Morison & Co. Shaw Wallace & Co. and the case of Parichapa kesa Ayer*).

PERSONAL OR PRIVATE EXPENSES OF THE ASSESSEE.

Of course salaries charged in respect of the services of the proprietor or of a partner in a firm cannot be allowed, but all other times of this nature, including wages to the wife or children, of a proprietor or partner, will be allowed. In the case of wages paid to the wife or children, it is usual for the taxing authorities to insist on a declaration that there has been actual payment in cash before allowing the amounts—*Thompson v. Bruce*, 6 A. T. C. 326.

SHARE OF PROFITS IN LIEU OF SALARY.

An assessee is entitled to claim deductions for wages paid to employees. Where an employee does not get any pay but is remunerated by a share of profits, it does not stand to reason, why this should not be allowed. The Madras High Court in the case of *Mahomad Kasim Rowther*, 106 I. C. 308, held that agreement to work for share of profits, where there is no right of control, does not constitute partnership and is not deductible.

In my opinion, if the assessee is not eligible to claim the one he is certainly entitled to claim the shares paid as if it were salaries. (Reference is invited to the cases of *Johnson Bros & Co. v. C. I. R.*, 12 T. C. 147 and *Eyres v. Finnieston Engineering Co.*, 7 T. C. 74.

PARTNER AND PARTNERSHIP.

Section 2(6A) runs thus : "Firm", "Partner" and "Partnership" have the same meaning as in the Indian Contract Act of 1872.

Section 239 of the Indian Contract Act runs thus :

“Partnership is the relation which subsists between persons who have agreed to combine their property, labour or skill in some business, and to share the property thereof between them”.

TESTS FOR DETERMINING PARTNERSHIP.

- (a) As to whether there is sharing of profits.
- (b) As to whether each of those who are alleged to be partners is principal and each agent for the other so that the business is of all the parties alleged to be partner.
- (c) Some kind of provisions as regards the assets and good will of the business are generally found in partnership contracts.
- (d) Partnership deeds are to be signed by both parties.
- (e) Provisions showing that each of the partners has some control over the conduct of the business, such as a right to demand inspection of the account books or to bring about a dissolution or winding up the business.
- (f) There must be mutual rights and liabilities between the partners inter se.
- (g) The right to control the property, to receive profits and liabilities to share in losses are the elements of partnership.

A right to participate in profits is no doubt a test and sometimes a strong test of partnership, but whether or not the relation of partners does or does not exist depends on the real intention and not upon the mere fact of participation in profits—*Davis v. Davis*, 1 Ch. (1894) 393 referred to in *MacLaren Morrison v. S. Vesch oylon*, 6 C. W. N. 439.

Section 242 of the Contract Act runs thus :

No contract for the remuneration of a servant or agent of any person, engaged in any trade or undertaking, by a share of the profits of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner thereon nor give him the right of a partner.

WORKING PARTNERS.

Having regard to the definition of the term “Partnership” I am of opinion that a working partner without any capital may be a real partner. A person may be made a partner only for his special proficiency in a particular branch of business. In *Ananta Ram v. Chummatal*, 25 All 378, it was held that

Lahmal who contributed his brains only, was a partner. Partnership of this kind is well known in Mahomedan Law and is named Mazaribat or Qeraz.

Similarly in *Chelaram v. Kishenchand*, 44 I.C. 28 31, it has been held that a Gomostha (servant) sharing in profits as well as in losses, is a partner in business.

PENALTIES.

When penalties are incurred by a trading firm for negligently failing to observe certain conditions imposed on, such penalties cannot be allowed.—*In re Warness & Co.*, 12 T.C. 232.

Profits from an illegal undertaking are assessable and no deduction will be allowed therefrom on account of fines imposed (e. g. in smuggling, street book-making)—*Canadian Minister of Finance v. Smith*, 5 A. T. C. 621, C. I. R. v. *Warness*, 12 T. C. 221, and *In re Von Glebe*, 12 T. C. 232.

In *Southwell Savil Bros Ltd.*, 4 T. C. 430, it was held that money spent in getting the "call of license" was an inadmissible deduction.

Penalties imposed for infringements of motor vehicles rules and excise rules are not allowable deductions.

BAD DEBTS.

"The assessee must for obvious reasons be the sole arbiter of his own rights and privileges as regards the business he conducts in his own interest. What is to his interest and what is prejudicial to him, must depend on his own decision. It therefore follows that, on the question whether to treat any particular debt as bad or irrecoverable, his word or decision must be final, for he alone can be the judge of the rights, chances and circumstances which may affect the recovery or non-recovery of that debt from his debtor. There is nothing in the wording of section 24 of the Income-tax Act, 1922, which militates against this view. That section does not authorise the I. T. O. to investigate and determine the year in which any loss sustained in any year under any of the heads mentioned in taxing section shall be set off against his income, profits or gains under any other head in that year so that loss under one head of income can be charged against profits under another in the same year.....I don't find such a prohibition either in section 10 or section 24 or anywhere else in the Act of 1922. In the absence of words proved to be such to the satisfaction of the Commissioner or words to that effect, in the Indian Statute, I am inclined to take the view that bad debts are deductible from business profits at the option of the assessee, the deduction need not only be of such as are proved to the satisfaction of the Income-tax Authorities to be bad debts. I don't find any restriction on the Indian

Statute as to the year in which bad debts would be deducted by the assessee.....In the absence of words in the statute restricting the assessee's option and prescribing the time for writing them off I think assessee is right to debit, the loss sustained on account of bad debts written up by him against the profits or gains of any year, must be held to be unqualified and absolute as regards the amount to be debited and choice of time at which to write it off. His decision to write bad debts off the account cannot be regarded as conditional on his proving them to be bad debts to the satisfaction of the Income-tax Authorities.

"Thus once these personal ledgers of the debtors are squared up or the balance reduced by the amount written off, the sums written off can no longer be carried over to the next year's books as outstanding assets of the business.

"It is common knowledge that no creditor ordinarily likes to write off a debt and thereby creates evidence in his account books, of it having been treated by him as bad and irrecoverable debts, unless he has lost all hopes of recovery, whether he has lost his limitation for a suit in respect of it or not." A. I. R. 1929, Nag. 50. This has been reversed by the Privy Council (vide below).

But in *In the matter of Bhallav Das Muralidhar*, 54 Bom. 430 : A. I. R. 1930, Bom. 201, it has been held that if assessee claims to deduct bad debts becoming irrecoverable some years before it is written off bad debts should be written off within a fair and a reasonable time and the Commissioner has no arbitrary discretion to say that bad debts should be written off in particular year. Every case should be decided on its facts.

An authoritative pronouncement has been made by the Privy Council in the case of *Sir S. M. Chitnavis*, 55 C. L. J. 575.

Their Lordships are of opinion that the view of the Judicial Commissioner is erroneous and that the assessee has no such decisive voice. For the purpose of computing yearly gains or profits, each year is a separate self-contained period of time, in regard to which profits earned or losses sustained before its commencement, are irrelevant. It therefore follows that a debt, which had in fact become a bad debt before the commencement of any particular year could not properly be deducted in ascertaining the profits of that year because the loss had not been sustained in that year.

In *In Bingraj*, 35 C. W. N. 589, the Cal. High Court held that the assessee cannot be allowed to pick and choose the year in which he will treat a debt as bad and write it off.

In their Lordship's opinion the assessee has no option at all

whether a debt is a bad debt and if so, at what point of time it became a bad debt, are questions of fact to be determined, in the event of dispute, by the appropriate tribunal and not by the *ipsedixit* of any one else.

"The main fact that a debt was incurred at a date beyond the period of limitation will not of itself make the debt a bad debt, still less will it fix the debt at which it became a bad debt. A statute-barred debt is not necessarily bad, neither is a debt which is not statute barred necessarily good."

The Bombay High Court in *Ballav Das Muralidhar*, 4 I. T. C. 318 has held that bad debts should be written off within a fair and reasonable time and that the commr., has no arbitrary discretion.

But the Patna High Court in the case of *Bansidhar Poddar*, A. I. R 1934 Pat. 46, agreed with the Privy Council decision in the case of Sir S. M. Chitnavis. In the case of *Lala Puranmal*, 2 I. T. C. 236, it has been held that the onus is on the assessee to prove that a debt became bad and irrecoverable in the particular year in which the deduction is claimed.

BAD DEBT AND JOINT STOCK Co.

The Bombay High Court, in the case of *Commr. of I. Tax v. F.E. Dinshaw*, A. I. R. 19 2, B, 609, has laid down that debts due by joint stock company engaged in business, stand on a different footing and that to constitute such debts as bad debts or a business loss, it is necessary that the company should have ceased to be a going concern. "An individual" their Lordships say, "may be a pauper without its being worth while for any body to make him an insolvent or he may leave the country and he may grow old and past the capacity of earning money. None of these considerations apply to a company."

With great respect to the learned judges, I do not subscribe to the above view and in my opinion there cannot be any inflexible proposition of law as propounded above. Everything will depend on the circumstances of each case.

SEPARATE HEADS OF RELIEFS WHETHER DISJUNCTIVE AND CUMULATIVE.

"In this case we feel that the legislature has done that which is so often done in Indian Acts and that by enumerating too much and trying to cover every possible case, they have *per incuriam* given more than one remedy in respect of what is clearly on ground of deduction. But until and unless that Act is amended, we think that separate heads of reliefs must be treated as disjunctive and cumulative. and hold that the deduction claimed except as regards the first three items falls within the express words of section 10(2) (*i.e.*), that the Scottish case is inapplicable in India, because the Act which the Scottish case

interpreted was an Act which only contained deduction for depreciation, and did not like the Indian Act specify under separate heads other deductions differently described. We do not think it right to hold that what I may call the omnibus clause (vi) can be construed as extinguishing the right to deductions which are specifically outlined and defined in other subsections of the Act": *In the matter of Ratan Singh*, 29 I. C. 1051 : A. I. R. 1926 Mad. 462, *vide* also the case of *Swadeshi Cotton Mills Ltd.*, 114 I. C. 897 : A. I. R. 1929 All. 70.

OBsolescence ALLOWANCE.

It is purely a question of fact, inasmuch as whether it is obsolete for the invention of a new machine or whether it is sold, is purely a question of fact as reported in the case of *Ramodhana Chetyar*, 1 I. T. C. 244.

But whether expenditure is capital or current is also a question of fact : *In re : Ramanath Radiar*, A. I. R. 1928 Rang. 152; similarly in *In the matter of Swadeshi Cotton Mills Limited*, A. I. R. 1929 All. 70 it was held that to "obsolete machinery sold after it broke down" section 10(2) (vii) still applies : *In Raja Gokul Das Mills Ltd.*, 80 I. C. 282 where deductions for obsolete machinery were allowed.

But loss, accidental or otherwise resulting in destruction does not entitle the assessee to claim allowance under this head as has been decided in the case of *of Ratan Singh*, 85 I. C. 478, where it was held : "I think the word 'obsolete' should be taken to include cases of unfitness arising from whatever causes it seems to me that it is unreasonable that a person can claim allowance on the machinery, which though in working order, has been superseded by invention, which makes its use not profitable but that a total destruction of the machinery leaves the trader without any remedy".

It is, therefore, clear that a claim for obsolescence can only arrive when the machineries are obsolete in its real sense but certainly it does not allow any claim for it for any change of business from one to another. But in the matter of *Sheddayal Jogannath and Bijraj*, 35 C. W. N. 314 it was held : "when machinery has been sold or discarded not for the reason that employment of newer types of machinery had become necessary but for the reason that being old and worn out, it could not be worked at a profit in competition with new machine, obsolescence allowance such as is provided by sec. 10(2) (vii) cannot be claimed." Obsolescence allowance is not claimable merely because machinery has become worn out and is sold and discarded for that reason. Whether a machine is obsolete or not is a question of degree and fact—*South Metropolitan Gas Co. v. Dadd*, 13 T. C. 205 relied on—*In re : Sew Dayal Jagannath*, A. I. R. 1931 Cal. 599 : 35 C. W. N. 314.

ALLOWANCE ON ACCOUNT OF DEAD OR USELESS ANIMALS.

The allowance in respect of livestock that has died or become permanently useless to the assessee should be granted whether the livestock is replaced or not. (I. T. M.)

LOCAL TAXES.

The proviso of sec. 10(9) lays down that no allowance is permissible for any tax, cess or rate, assessed on the basis of profit. In the case of *Raja Jyatiprasad Singh Deo*, 6 P. L. J. 62, Chief Justice Dawson Miller observes : "but I can see no reason why royalty received from mines should be regarded as anything other than income in the ordinary sense. There is no definition of the word 'income' in the Act itself, but its meaning as there used can, I think, be determined with sufficient accuracy from a perusal of the Act. Without giving an exhaustive definition it may be described as the annual or periodical yield in money or reducible to a money value arising from the use of real or personal property or from labour or service rendered bearing in mind that in some cases, e.g., income derived from house property the yield must be taken as the *bona fide* annual value and not necessarily as the actual yield..... as a last resort the petitioner contends that the amount levied for cesses is an expenditure incurred solely for the purpose of making the income, but it would, in my opinion, be an undue straining of plain language to say that the payment of road cess is an expenditure incurred solely for that purpose." In *K. M. Selected Coal Co.*, 3 Pat. 295 it was held by Justice Dawson Miller : "if in fact the very nature of the business requires that certain expenses should be incurred before profits can be ascertained then I, think, that such expenses can fairly be said to come within the meaning of (ix) of cl. (2) in section 10 of the Act, as expenditure incurred solely for the purpose of earning such profits or gains. In my opinion, therefore, the local rates which the assessee claims should be deducted from its taxable income in this case and should be deducted before the assessment of his income is made. Similarly in 29 C. W. N. 923 the Calcutta High Court held : "Cesses paid by a Colliery Co., are local rates in respect of such part of the premises as is used for the purposes of the business within the meaning of clause (v) of sub-section (2) of section 10 and they are entitled to deductions of the amount of cesses paid. The word 'premises' has never been legally defined. Popularly premises usually means a building ; colliery is premise." Attention is invited to the decision in the case of *Howrah Amta Light Railway Ltd.* 32 C. W. N. 751, that such payments are not deductible expenses. (Vide also the Patna High Court case of *Siraprasanna Singha*.)

In the matter of *Nedungadi Bank Ltd.*, 81 I. C. 454, it was

held that "the payment of the compulsory levy to the municipality by way of the tax on companies is not merely for the purpose of extension of trade but it is a condition precedent to the exercise of the trade at all within the municipal boundary. We are therefore clearly of opinion that the payment of companies' tax compulsorily levied on this company by the municipality is wholly and exclusively for purposes of the trade and the object which that payment accomplishes is the same. The answer is, the expenditure is incurred wholly for the purpose of earning, profits or gains."

In *Isabella Coal Co.*, 89. I. C. 786, it was held that colliery is a premise used for the purpose of business of extraction and sale of coal and the road and public works cess paid on account of the colliery is a local rate, 89 I. C. 789 : 53 Cal. 76 : 29 C. W. N. 923. Similarly income-tax on trading company by the municipality in the shape of license fees can be deducted as a proper business allowance ; 44 Mad. 489 dist. *Nedlungadi Bank Ltd.* 81 I. C. 454.

BONUS OR COMMISSION PAID FOR SERVICES RENDERED.

The sub-clause (*viii-a*) has been inserted by the Act of 1930. It lays down that where bonus or commission is paid to an employee for services rendered, the amount thus paid should be considered as not liable to assessment provided (1) it is reasonable with reference to his pay and condition of service (2) with reference to the profits of the business for the year in question (3) with reference to general practise in similar other businesses.

BUSINESS EXPENDITURE IN GENERAL.

Under section 01(2)(*ix*) it is enacted : "any expenditure incurred solely for the purpose of earning such profit or gains" should form legitimate deductible expenses. As a matter of fact nowhere it has been exhaustively dealt so as to furnish a complete list of deductible expenses which may crop up before income-tax authority. The natural or equitable interpretation always should be whether the deductions claimed for have been incurred for the purpose of earning profits. In every case it always depends upon the nature of business and practice with regard to the business concern. What is admissible or inadmissible is often a question of fact. Any man of experience with sufficient intelligence can easily understand what is and what is not for the best interest of the business.

BOARDING AND TRAVELLING ALLOWANCE.

Boarding expenses and conveyance allowance for employees for the welfare of the business and for retaining the services of employees are deducible expenditures.

OTHER CHARGES.

Contingent charges and establishment charges, *e.g.*, postage, telegraph, legal charges, stationery and advertisement cost, railway freight and salaries paid to the employees are deductible expenditure. Audit fees are permissible deduction but sums spent for representing a case before Income-tax authorities are not spent for earning profits and hence no deductions are permissible as reported in the case of *Muniswami Chetty*, I. T. C. 227; but legal charges in connection with the business, say for realisation of arrears, are legitimate business expenses.

EMBEZZLEMENT.

In the case of *Jaggannath Therani*, 4 Pat. 335 : 86 I. C. 777 it was held by Justice Ross that embezzlement by an employee was not a loss in the nature of capital expenditure but was a loss incidental to the conduct of the business, and allowance should be made on this account.

BOARDING EXPENSES, TRAVELLING EXPENSES, ETC.

Where an assessee incurs expenditures in the nature of boarding (*thasha kharach*) and travelling (*Bidagri*) allowances to employees in order to retain their services for the benefit of the business and in order to increase their efficiency, these payments being made solely for the purposes of earning profits, should be deducted in calculating the assessee's taxable income. It is not open to the Income-tax authorities to question the arrangements made by an assessee. Whether the assessee should retain the services of more or less hands should entirely depend on the discretion of the assessee.

PERSONAL OR PRIVATE EXPENSES OF THE ASSESSEE.

Any expenditure incurred by the assessee for his own personal or private use is not an allowable item. Salaries drawn by assessee's partners cannot be allowed. In the case of *V. V. Garu*, 1 I.T.C. 176 the Madras High Court held : "on the facts stated we have no hesitation in answering that the drawings of the partner by whatever name they are described are part of the profit and therefore taxable." In practice, however, it is often noticed that the Income-tax Officer as of rule does not allow partner's salaries but even goes so far in disallowing salaries paid to a *bona fide* employee who happens to be near relation of the assessee. Legally this is arbitrary and not in keeping with the spirit of the law and should be discouraged. An assessee is entitled to engage any one he likes, relation or not and the authorities are to see whether payment has been actually made or not.

LOSSES—THEFT.

The Full Bench of the Madras High Court in the case of

Ramaswami Chettyar, A. I. R. 1930 Mad. 808 : 127 I. C. 611 held that the loss incurred by the theft of money used in the money-lending business and from the stronghold in the business premises, none of the thieves being then servant of the assessee is not a loss incidental to the business of the assessee and not allowed for computing income-tax: 2 I. T. C. 4 *dist.* But this is inequitable, and accidental loss should have been allowed. Can any allowance be made for theft committed by an employee? But where loss is incurred by a standing surety to another firm it is not a loss in the course of the business and cannot be deducted from the assessable income: *In the matter of Iswar Das*, 92 I. C. 249: A. I. R. 1926 L. 168.

ADVERTISEMENT.

A trader knows how best to conduct his business and if any expenses are incurred as advertisement cost, such expenses should be allowed; but payment of capital advanced out of profit is not an allowable item: *In re : Hazizamal Nurmahamad of Bombay*, 86 I. C. 848. But in the case of *Alagagan Chetty*, A. I. R. 1928 Mad. 902 it was held that money paid to rival firm with the object of inducing them not to compete is not a permissible deduction.

WAGES.

Employees are entitled to have the wages claimed as business expenditure. But if the wages granted to employees are in the nature of share of profits, neither wages nor share are deductible: *In re : Mahamad Kasim Rowther*, 106 I. C. 308. The Madras High Court held: "Agreement to work for share of profit when there is no right of control or management, does not constitute partnership and is not deductible". To me it seems that this ruling is in direct conflict because the amount cannot be taxed doubly, once in the hand of the master and again in the hand of the servant. Under section 60 the Governor-General in Council has by a notification removed the liability of such profits from double taxation.

PARTNERS' SALARIES.

If a particular partner possess special qualifications for which he is paid irrespective of the existence of profits, the salaries could be allowed as a deduction. The dual capacity of a partner cum employee, though suspicious, is possible and to the extent that the person is in truth an employee, the salary is deductible from the profits of partnership—*In re : Electric and Dental Stores*, A.I.R. 1931 L. 341.

WORKING PARTNERS.

Instances are rather common where business concerns are often conducted practically by employee under the title of

working partner. The capitalist partner only helps the concern by his capital and the employees are practically the active workers conducting and managing the business. In the case of *Mahammad Kasim Rowther*, 106 I. C. 308 it was held that where the partners are found to be mere employees, payment of profits to them as working partner cannot be deducted neither the assessee can claim any deduction on the plea that share so paid virtually represents the salaries.

WORKING PARTNERS' CRITERION—EMPLOYEES OR NOT.

As a matter of practice those who contribute capital to the partnership are proprietors. The title page of the account book must show who the proprietors are and the extent of their share. The books must also contain allocation and apportionment of profits or losses according to their respective share. In the case of *Mohammad Casim Rowther* it has been laid down that working partners without any capital in the business are to be considered as mere employees. But in that particular case the said working partners are said to have participated in profits alone and not in losses. Further they have absolutely got no control in the management of the business : their services depend on the discretion of the capitalist partner. As they were found not participating in losses and as their services can be dispensed with by a moment's notice they were rightly described as employees. But where working partners without any capital in the business are found to participate both in losses and profits which can be verified from books of account containing allocation of profits or losses, the fact of this working partner having no capital can be no barrier of his being treated as partner. It is common knowledge that absentee proprietors often make their employees working partners with the sole object that the business may prosper through them by their special knowledge or that a share often given to employees may result in better management of the business itself. The Income-tax authorities are quite competent to look into all details in order to arrive at a finding whether the co-option of the working partner is essential for the best interest of the business or it is a device to hoodwink the department. Hence a working partner with any capital may be a real partner where he actually participates in both loss and profits and where he cannot be removed at pleasure. (*See infra*).

LAWYERS.

It is said that sums spent for representing a case before Income-tax Authorities are not spent for earning profits and hence no deductions are permissible, but all legal charges in connection with the trade debts, incurred by the assessee, are legitimate business expenses and should be allowed.

ASSESSMENT OF A LAWYER.

But where the assessce is a lawyer himself, the basis of accounting must be cash basis. The professional income which he derives practically represents the gross receipt and not the net income. As a matter of fact lawyers are entitled to claim deductions of the amount paid as license fee because the license fee is a condition precedent of his being allowed to practise as a lawyer. The amount of fees which are not recoverable within the year of account must not be added to his total income. He is further entitled to claim deductions for the boarding expenses of his clerks, for the salaries, if any, paid to them and further for any miscellaneous expenses he incurs for his clients. Where a lawyer purchases a motor car and claims deduction for depreciation and other expenditure as a lawyer, the income-tax authority cannot possibly allow any deduction at all for his motor expenses in view of the fact that it is not at all possible to ascertain how much was spent for his professional purposes. Where lawyer resides in a rented house, he can claim deductions of the house rent on the ground that the house rent paid is for earning profits. It seems that the income-tax authorities must try to ascertain whether the whole house is essential for his business premises. If it is a rented business premise under section 9, he can claim full deductions but, if on enquiry, it is found that he practically lives there with his family members setting apart a room for his profession, the income-tax authorities should allow a proportionate deduction of the rent paid. It is out of place for the authorities to suggest that a smaller house with less rent would have served his purpose. In the case of *H. S. Gour* of Nagpur it was held that an estimated assessment is justified for sale of books during several periods of years in a closed account and such sale of legal treatises is not a causal income within the meaning of the Income-tax Act.

BOOK-SELLERS AND AUTHORS.

When an author publishes a book and is asked by the Income-tax Officer to file his return, he must show the net income or losses arising out of the sale of books. Take for instance: *A* publishes 100 copies of books and sells within the year of assessment 50 books only and incurs an expenditure much more than the sale price. The Income-tax Officer must not take the sale price as net income and the closing stock together with it, inasmuch as the closing balance represents the capital.

DIRECTORS OF LIMITED COMPANIES.

When directors receive remunerations for their work, the amount of remuneration is an income within the meaning of

the Act. Where the Managing Director makes any defalcation, the sum defalcated cannot be deducted inasmuch as this is not an embezzlement by an employee. This is according to the English ruling and is quite in keeping with the ruling. *In the matter of Ramaswami Chettyar*, A. I. R. 1930 Mad. 808; but it seems proper that a loan company can claim deductions for such defalcations where the company can show that managing directors or directors are employees of the company whether they receive anything by way of salaries or not.

CONTRIBUTION OF TRADE ASSOCIATIONS.

Where businessmen form associations for their own interest and pay subscription for the maintenance of the association, the amount of subscriptions paid should form a legitimate trade expense.

CHARITIES.

"It is a well known and long established custom for Indian traders and businessmen generally in all parts of the country to charge their customers or clients a small fee on each transaction, for example, so many pies on each bag of some commodity sold, the proceeds of which are supposed to be devoted to various religious, charitable or educational purposes and, it is believed, are generally so applied ultimately.

"The legal position in regard to such receipts and expenditures is often very doubtful but considerable discontent has been caused by the disallowance of deductions claimed by income-tax assesseees on account of expenditure of this class.

"The Central Board of Revenue has now decided that in future, customary subscriptions by clients and customers for religious or charitable (including educational) purposes and the corresponding expenditure by the assessee, shall be left out of account altogether in computing the taxable income, provided that the Income-tax Officer is reasonably satisfied that the sums in question are really applied by the assessee ultimately (and not necessarily in the year of collection) to the object for which they were ostensibly collected.

"It has also directed that such subscriptions should not be separated from the business expenses of the subscriber and disallowed in assessing him." (Press Communique, dated the 25th February, 1928.)

MISCELLANEOUS BUSINESS DEDUCTIONS.

Under section 10(2)(ix) in para 49 of the Income-tax Manual elaborate discussions have been made as to business

deductions. We give below a substance of those deductions namely:—

(1) Contributions by employers' private funds constituted for the benefit of the employees are exempted from tax.

(2) Actual sums paid as pensions to ex-employees or to the widow or children of an ex-employee should be allowed as a business expense.

(3) Premia paid by the employer to cover the risk of liability to compensate any of his employees for injuries under the Workmen's Compensation or Accident Insurance Act should be treated as business expense.

(4) *Bona fide* expenditure for the welfare of the employees of a business should be allowed as a business expense.

(5) *But contributions for the support of clubs, recreation grounds, religious institutions, dispensaries, hospitals, schools and the like should not be allowed.*

(6) But where an assessee maintains a school or a dispensary solely for the benefit of his employee and incurs expenditures for the maintenance of a conservancy staff to keep the surroundings of the dwelling of the employees in a sanitary condition, reasonable expenditure should be allowed.

(7) Capital expenditure, *e. g.*, the amounts spent on the construction of latrine, drains, water-works, or hospitals should not be allowed.

(8) Sums embezzled by an employee are to be allowed.

(9) Payments received from constituents to cover railway expenses, coolie charges, etc., that are debited specifically to constituents are to be allowed.

11. (1) The tax shall be payable by an assessee under the head "Professional earnings" in respect of the profits or gains of any profession or vocation followed by him.

*(2) *Such profits or gains shall be computed after making the following allowances, namely:—*

(i) *any expenditure (not being in the nature of capital expenditure) incurred solely for the purposes of such profession or vocation, and not being personal expenses of the assessee;*

(ii) *in respect of depreciation of buildings and depreciation and obsolescence of machinery, apparatus, appliances, plant, furniture or*

other capital assets being the property of the assessee and used solely for the purposes of such profession or vocation the allowances specified in clauses (vi) and (vii) of sub-section (2) of section 10 subject to all the conditions specified in those clauses.

(3) Professional fees paid in any part of India to a person ordinarily resident in British India shall be deemed to be profits or gains chargeable under this head.

THE NEW AMENDMENT.

• • Depreciation and obsolescence allowances were only restricted to profits from 'business' under section 10 and these have been extended to professional earnings. The Amendment provides allowances to professional men in respect of depreciation and obsolescence of buildings, machinery, apparatus, appliances, plant, furniture and other capital assets of the property of the assessee and used solely for the purposes of such profession or vocation as provided in section 10(2)(vi) and (vii).

EXTENT AND APPLICATION OF THE SECTION.

Section 11 mainly deals with a profession or vocation. It may be legal, medical, etc. But in each case computation of profits must be made after making allowance for any expenditure incurred solely for the purposes of such profession or vocation. But personal expenses of the assessee, costs of fooding and boarding and salaries, if any, incurred by the assessee, must not be allowed.

Thirdly, professional fees, if any, paid in any part of India to a person ordinarily resident in British India shall be deemed to be profits or gains chargeable under this head.

CONDITIONS FOR DEDUCTIONS.

An assessee is not entitled to deduct an expenditure (Adat, interest, etc.) not actually incurred by him before the close of the account year and a deduction can be claimed only if the expenditure is actually incurred or the liability incurred is satisfied before the close of the year: *In the matter of Joy-narayan Mutiram*, 123 I. C. 467 : A. I. R. 1926. Nag. 243.

PROFESSION TAX.

In the case of *King and Patridge*, 92 I. C. 943 it was held that the profession tax is a payment made out of the income of the taxpayer and is quite different from license fee though

the payment is not made in the matter of license fee. It always depends upon the nature of the profession tax levied.

EXPENSES, CAPITAL OR NOT.

Where expenses are incurred solely for purposes of profession, such expenses are admissible deduction. But expenditure which is of capital nature, *e. g.*, additions alterations and improvements are capital expenditures and as such should not be allowed and it is doubtful whether any amount spent for such capital expenditures should be allowed or not.

PROFESSIONAL FEES—WITHIN AND OUTSIDE BRITISH INDIA.

Strictly speaking professional fees received by an assessee, ordinarily resident in British India, are taxable, but in the case of *Eastern Extension Australasian and China Telegraph Co. Ltd.*, (unreported) the Madras High Court held that income-tax and excess profits duty paid in England by non-resident are not permissible deductions.

But in the case of *Rogers Pratt Shellac Co., Ltd.*, 28 C. W. N. 1004. 40 C. L. J. 110, it was contended that to include income which did not arrive or accrue in British India to a non-resident of British India would be to make not actual but "notional" income chargeable. The taxability of notional income is an idea not foreign to the Act, for by section 8 *bona fide* annual value of property has been made assessable as being income which has accrued to the property, though it may not have actually arisen from it.

In the case of *Ramnandan Chetty*, 43 Mad. 75 it was held that profits derived from business carried on outside British India by persons, resident in British India are not liable to assessment if the profits are not remitted to British India. The Calcutta High Court in the case of *Bengal Nagpur Railway Co. Ltd.*, 27 C. W. N. 34 : 70 I. C. 46 : 1 I. T. C. 178, held that it is not liable to pay tax on the interest guaranteed by the Secretary of State and this ruling is to be followed in the case of railway companies where the interest is guaranteed by the Secretary of State and is paid in England.

INADMISSIBLE DEDUCTIONS.

Where an employee is required to supply his own tools, he can get deduction of the amount actually spent for the upkeep of the tools during the accounting year. Musicians can put forth claims for amounts spent for the purchase and maintenance of musical instruments.

Travelling allowances incurred in the performance of duties will be normally allowed, but hotel charges are living

expenses and hence inadmissible. Costs for maintaining telephone are inadmissible—*Nolder v. Watters*, 15 T. C. 38.

Professional subscriptions are but deductible—*Simpson v. Tate*, 4 A. T. C. 187 and so are removal expenses—*Frydson v. Glynn Jones*, 1 A. T. C. 346. Cook's wages for a school master are not allowable—*Bowers v. Harding*, 1 Q. B. 59. Profession tax of a solicitor is not deductible—*Commr. of I. Tax v. Putridge*, 49 M. 296.

A professional man is not entitled to following deductions u s 11 *e.g.*, travelling expense and hotel charges. A professional man must have some kind of office, the rent of which is undoubtedly allowable. If he lives in a substantial house and uses few rooms exclusively for his profession, he is entitled to a proportionate deduction. Pay of clerks and peons are of course allowable. The cost of running a conveyance to and from office to court or to patients is allowable, provided the conveyance is used solely for his profession ; if it is not, no part of it is allowable. Subscription to Association to which legal practitioners as a rule belong are certainly expenditures incurred solely for earning profits. Professional tax paid to the Municipality or District Board, is a contribution from the income of the assessee and hence inadmissible.

12. (1) The tax shall be payable by an assessee under the head "Other sources" in respect of income, profits and gains of every kind and from every source to which this Act applies (if not included under any of the preceding heads).

(2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee.

SCOPE OF THE SECTION.

Section 12 covers any income, profits or gains which are not chargeable under sections 7 to 11. All incomes other than those mentioned in sections 7 to 11 should be assessed under this section as income derived from "other sources".

ACCOUNTING PRINCIPLES.

If the expenditure required to obtain the income from the capital assets is negligible the case is the simple case of a man in receipt of a clear revenue therefrom. If some con-

siderable expenditure is necessary before the annual return can be obtained, then the history of the year will be stated in the form of a "trading" or "revenue" account or account of the receipt and expenditure during the year. It is essential when accounting on this basis, to exclude from either side of the account matters which in substance represent only a rise or fall in the value of the assets from which revenue is derived as distinct from net revenue itself or which represents only a change in the form of the investment, whether the change be a change to money or into some other form of property : *In re : Gupta Estate*, 50 C. L.J. 375 : 34 C. W. N. 327 : A. I. R. 1930 Cal. 1.

SELAMI.

In *In re : Guptoo Estate Ltd.*, where the assessee received a lac of rupees on the advantage of forfeiture clause of reentry, the Calcutta High Court decided that the sum so received is selami and as such is not liable to assessment. This represents the capitalised value of the land.

BONUS SHARES OF COMPANY.

Distribution of profits accumulated by a company in the form of bonus share was given to shareholders without any option to have the profit in any other form. These bonus shares do not at all represent "income, profits or gains" to the shareholder within the meaning of sections 2 (15) and section 12 : *In the matter of Steel Brothers & Co. Ltd.*, 82 I. C. 665 : 2 Rang. 211.

OTHER SOURCES.

An income from the settlement of the right to collect a particular kind of earth in particular area during a particular season for the purpose of extracting saltpetre and which is not causal or non-recurring, is assessable as income from "other sources" : *In the matter of Mahadeo Asramprasad Shahi Bahadur*, 100 I. C. 897 : 6 Pat. 29. It has been held that income from brick lands is not a capital receipt and shall be assessed as an income within the meaning of section 12—*In re : Maharani Junki Kuer*, 133 I. C. 38.

INCOME FROM ZAMINDARY IS ASSESSABLE UNDER SECTION 12 AS "OTHER SOURCES".

"The words of section 12 (1) are clear and emphatic and are expressly framed so as to make the sixth head in section 6 describing a true residuary group, embrace within it all sources of income, profits or gains, provided the Act applies to them, i.e., provided that they accrue or arise or are received in British India or are deemed to accrue or arise or to be received in British India as provided by section 4 (1) and are not exempted

by virtue of section 4 (3). Therefore, sections 6 and 12 of the Act bring into charge for the purposes of income-tax, the income derived from a Zemindary and the Zaminder is assessable in respect of income, profits or gains derived from that source after making allowance for the jama assessed and paid': *In the matter of Probhat Chandra Barua*, 125 I.C. 871 : A. I. R. 1930 *Privy Council*, 209.

OTHER SOURCES.

It is almost hazardous to make an attempt to enumerate a list of income under the heads of other sources but without attempting to give a detailed list, the following may be mentioned by way of illustration, *e.g.*, bank deposit, illegal cesses, incomes from jalkar, hat royalty, lease-hold and others. Partnership property has been held to fall under head "other sources". Fees received by a lawyer as an university examiner, are assessable u/s 12—*In re : H. S. Gour*, 3 I. T. C. 350.

INCOME FROM LEASE-HOLD.

In the matter of *Busanta Ray Takhat Singh*, A. I. R. 1930 All. 288 it was held that "land taken on lease for one year with interest to sublease in smaller plots, the income of lessee is neither property nor business but income falling under the head "other sources".

IMPARTIBLE ESTATE.

It was held that income of impartible estate is that of an incumbent for the time being : *In the matter of Shiva Prasad Singha*, 82 I. C. 653.

But where the holder of an impartible estate grants certain mouzas to his younger son by way of maintenance, liable to be revoked on three months' notice, it was held that income from royalties is still the income of the holder of the estate and the holder and not the sons are liable to assessment : *In the matter of Jyotiprasad Singha Deo Bahadur*, 130 I. C. 43.

COMPENSATION FOR LOSS OF OFFICE.

The Cal. High Court in the case of *Turner Morrison & Co.*, 33 C. W. N. 112, held that such compensation is taxable. But the Privy Council in the case of *Messrs Shaw Wallace*, 136 I. C. 143 doubted the decision of the case of *Turner Morrison & Co.* In the Privy Council, their Lordships have held that these payments are by way of solatium and are not income within the meaning of section 3 of the Act.

13. Income, profits and gains shall be computed, Method of account- for the purposes of sections 10, 11 and 12, in accordance with the method of accounting regularly employed by the assessee :

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

Owing to a High Court ruling referred to in paragraph 13, regarding the definition of the word "income" the provisions in the present Act have been so worded as to make it clear that as regular income, profits or gains from business, professional earnings or the other sources mentioned in section 12, no uniform method of accounting is prescribed for all taxpayers, every tax-payer may, so far as is possible, adopt such form and system of accounting as is best suited for his purposes. The only restrictions are that the method adopted must be one that clearly reflects the income of the assessee in respect of the fixed period of the "previous year" and that it is the one regularly employed by him for the purposes of his business. If the tax-payer does not regularly employ a method of accounting which clearly reflects his income for the "previous year," the computation will be made in such manner as in the opinion of the Income-tax Officer does clearly reflect it.

CASH AND MERCANTILE SYSTEM.

There are two main systems of keeping accounts. There is firstly the cash basis system, where a record is kept of actual receipts and actual payments, entries being made only when money is actually collected or disbursed. There is secondly, the mercantile accountancy system under which a profit and loss account is maintained and a comparison is made of the value of the stock in hand at the beginning and at the end of each year. Under this latter system entries are made in the accounts on the date not of receipt of money or expenditure of money, but on the date of transactions irrespective of the date of payment. When goods are sold, for example, an entry is made at once on the receipt side of the account, although no cash may be received at the time in payment of such goods; and an entry is similarly made on the debit side when a liability is incurred although payment on account of such liability may not be made at the time. It will be the method of accounting adopted for or by the tax-payer, therefore, that will determine the period within which any item of gross revenue or any deduction therefrom is to be accounted for, and which will determine whether particular allowances are or are not permissible.

It is for this reason that the Act does not contain a complete statement of the deductions or allowances that are permissible or not permissible in working out business profits or professional earnings, since certain allowances or deductions can only occur where the mercantile accountancy system is adopted. There can, for example, be no allowance for "bad debts" where the cash basis is the method of accountancy employed. Under the mercantile accountancy system, as noted above, an entry is made on the receipt side when a sale is concluded, although the money on account of such a sale has not been paid and in making up the accounts at the end of the year such entries are treated as receipts, and the tax is levied on these 'book profits'. It may happen that some of these 'book profits' cannot be recovered; they are written off as 'bad debts' when found to be irrecoverable and since such "book profits" have been included in the income assessed to income-tax, the 'bad debts' must be written off against the 'book profits' in the year in which they are written off in the accounts as irrecoverable. Where the cash system is adopted there can be no 'bad debts'.

Again, it will be the method of accounting that will determine the particular year in which allowances common to both systems of keeping accounts may be made. In sub-section (2) of section 10 of the Act provision is made for allowances on account of rent paid, interest paid on capital borrowed, the amount of premium paid in respect of certain classes of insurance, amount paid on account of current repairs, etc., and sub-section (3) of section 10 states that the word 'paid' means 'actually paid' or 'incurred' according to the method of accounting upon the basis of which profits or gains are computed, *i.e.*, where the cash basis is adopted, it will be the date of actual payment that will determine the year in which such allowances may be made, whereas if the mercantile accountancy system is adopted, the allowances can be claimed in the year in which the liability to pay accrued. (Para 37 of the I. T. M.)

METHOD OF ACCOUNTING "REGULARLY EMPLOYED."

The method of accounting regularly employed by an assessee for the purposes of his business should, so far as possible, be the method adopted for working out his profits for income-tax purposes; but the Income-tax Officer has to decide whether that method of accounting is the one regularly employed for the purposes of the assessee's business and whether it is such as to reflect clearly the taxable profits for the "previous year". In most cases this should cause no difficulty. Doubtful cases should be referred to higher authorities. As an example of the principles to be followed in settling doubtful cases two

instances of such cases are given. It is the practice amongst certain merchants to prepare their accounts on the basis of the mercantile accountancy system in respect of transactions between themselves and members of their own community, but on the basis of each payments in the case of transactions between themselves and their customers: provided that the same system is continuously employed, there appears to be no reason why this particular practice should not be considered to be a "method of accounting regularly employed". Again there are cases where the various branches of business are only closed down once in three or five years and where the accounts of the branches are not annually incorporated in the head-quarters business's accounts. In such a case it might be possible to assess either on the average annual profits of the branches as disclosed by the accounts last filed or on the actual profits brought to account owing to particular branches closing down in particular years.

The cases in which an assessee desires to change his accounting system should be rare and where such a request is made, the Income-tax Officer in considering it should, as in the similar case of a demand for a change in the "previous year" (paragraph 6), if he is prepared to allow the change, take steps to secure that no profits escape taxation on account of the change. While section 13 leaves it to the discretion of the Income-tax Officer to decide whether a particular system of accounting should be accepted or whether a change in the system of accounting should be allowed, the discretion of the Income-tax Officer in this matter can be questioned in the course of an appeal against an assessment under section 30, *i.e.*, it may be made one of the grounds of appeal in contesting the assessment of the profits. (Para 38 of the I. T. M.)

METHOD OF ACCOUNTANCY.

In matters of accountancy, two main systems are in vogue, one is the cash basis and the other is mercantile. Cash basis system denotes actual receipts and disbursements whereas mercantile system is popularly the one where a profit and loss account is maintained including the cash and credit sale realised and unrealised amounts. Take for instance the cash of a grocery business. Here the assessee sells articles on cash and on credit; entries are made on the receipt side although there may not be any payment and similar entries are kept in the debit side. Allowances, if any, whether permissible or not depend on the system adopted by the assessee. Thus where the method of accounting is clearly mercantile the income-tax authorities are competent to add back any interest which is said to have arisen or accrued during the year under assessment; but such interest cannot be added on the total

income where the basis of accountancy is cash. Strictly speaking limited companies, e.g., banks and loan offices adopt the mercantile system. Of course this does not mean that cash system is unknown to these companies. In the mercantile system "bad debts" are deductible expenditures but this cannot be allowed where the system is cash.

As to the basis of accounting, it is open to a trader to adopt either the mercantile basis of accounting or the cash basis. He is not forced to adopt one in preference to the other, but he cannot adopt both and once an assessee has adopted the mercantile basis of accounting, it is upon that basis and upon that alone that he is to be assessed, as has been held in the case of *Subromaniam Chettyar*, 50 Mad. 765 : A. I. R. 1927 Mad. 841.

Section 13 further enjoins on the assessee that mere booking is not always a conclusive evidence. Stock must be valued either on the market value or at its purchase price. Closing balance of a year must tally with the opening stock of the next year as has been found in the decision in the case of *Chengal Varaya Chetty*, 48 Mad. 836. The assessee is further estopped in adopting one system in his book and claiming another at the time of assessment. An assessee is not competent and not justified in keeping his account in one way for his benefit and then to claim computation of profits in a different way. This theory is the outcome of the Madras High Court decision in the case of *Subromaniam Chettyar*, 50 Mad. 765. Similarly method of valuing stock for one year cannot be changed in taking the value of the stock for the succeeding year as laid down in A. I. R. 1925 Mad. 1242.

Where compound interest in default is added to the principal for non-realisation, such interest is not taxable : *In the matter of Venakata Chalapatty Garu*, 1 I. T. C. 185. But where interest has fallen due to an assessee but has not been paid to him although he shows the amount in his interest ledger on the credit side for himself according to the mercantile system of accountancy which he had adopted that amount so shewn is not income, profits or gains under section 13 of the Act : *In the matter of Nandlal*, 111 I. C. 159 : A. I. R. 1928 Nag. 241.

But the rule as it stands, taxability or not, entirely depends on the system of accountancy adopted by the assessee. It may be mentioned that where an assessee receives interest of several years in a particular year when the basis of accountancy is cash, he is entitled to set off losses incurred in all those years : *In the matter of Shivo Prosad*, 124 I. C. 467 : A. I. R. 1929 All. 819.

APPLICABILITY OF SECTION 13.

Where the method of accounting is one regularly employed by the assessee, the proviso to section 13 is inoperative : *In the matter of Feroz Saha*, A. I. R. 1930 L. 197. The proviso is applicable when there is no method of accounting. When nothing is written in the order about the method employed but is written that the business is prosperous and profitable and expresses doubt as to the genuineness of the accounts, an estimated assessment is illegal—*In re : Kesri Das & Sons*, A. I. R. 1926, L. 201.

If the account books furnish any method of computation of profits, the I. T. O. may apply such methods as appears him best. But he has got to employ some basis or method and he cannot assess arbitrarily *In re : Radhey Lal Balmukunda*, 130 I. C. 634. The fact that the I. T. O. has justifiably proceeded on a basis and in a manner of his own in computing profits, does not, of course exempt his computation from examination in appeal and if it appears that he has adopted a wrong method, the assessment may be set aside, *In re : Kameswar Singh*, A. I. R. 1933 P. C. 108.

LOSSES.

An assessee is entitled to deduct from his estimated income actual losses suffered in particular year and amount of irrecoverable debts that should have been discovered in particular : *In the matter of Shivo Prasad*, 124 I. C. 467.

COMPUTATION OF INCOME.

Where the computation of income profits or gains for a particular year has been made under the provisions of section 13 upon such basis and in such manner as determined by the Income-tax Officer, the assessee is entitled to show that income, profits or gains included in the assessment for a subsequent year were included in that computation and as such it is always a question of fact and adjudication must be made on the evidence in each particular case : *In the matter of C. T. V. S. Chetyar Firm*, 122 I. C. 902 : 7 Rag. 644.

DECISION ABOUT METHOD OF ACCOUNTING.

The Income-tax Officer is the sole arbiter on the question of the possibility of deducing the profits from the method of accounting employed and the assessee is not entitled to challenge his opinion : *In the matter of Firm Gokul Chand*, 94 I. C. 128.

EQUITABLE ESTOPPEL.

Where method of accounting has been accepted by the Income-Tax Officer in one transaction, he cannot object to same method in similar other transactions. Until income-

tax authorities acting under the proviso to section 13, issue specific orders disapproving assessee's system of accountancy as an unsuitable and improper one and directing the adoption of a different method, the assessee is entitled to be assessed and to claim set off for losses on the basis of his special method of account keeping : *In the matter of Banshilal Abirchand*, 108 I. C. 805 : A. I. R. 1928. Nag. 102.

ACCOUNTING PARTLY CASH AND PARTLY MERCANTILE.

Section 13 relates only to the method in which income, profits or gains are to be computed. It has got nothing to do with assessment of accrued interest : *In the matter of Nanakchand*, 96 I. C. 368.

VALUATION OF STOCK.

In the Privy Council case of the *Ahmedabad New Cotton Mills Co. Ltd.*, A. I. R. 1930 Privy Council 56 : 51 C. L. J. 129, it was held that where the opening and closing stocks of a business are both under-valued and real profits cannot be ascertained the income-tax authorities cannot make an assessment by raising the valuation of the closing stock without taking into consideration similar under valuation of the opening balance, A. I. R. 1928 Bombay 510 affirmed. But where the assessee values the closing balance at cost price and does not claim any loss on the ground that market price is less, assessment is to be made on cost price : *In the matter of Banshilal Abirchand*, 108 I. C. 805. But it must be borne in mind that method of valuing a stock for one year cannot be changed in taking value of the stock for the succeeding year : *In the matter of Chengal Faroya*, 91 I. C. 137.

UNADJUSTED BOOKS OF ACCOUNT.

The income-tax authorities cannot resort to an estimated assessment merely because the books are found to be unadjusted. He is not certainly entitled to make an estimated assessment if profits can be easily ascertained therefrom. Chief Justice Dawson Miller observes in the case of *Raghunath Mahadeo*, 89 I. C. 675 : "the facts as set out in the petition and as stated by Mr. Jayaswal on behalf of the assessee are, that the accounts produced in support of the cloth, gold, silver and jute businesses although not balanced or not closed in the sense I have already referred to, do, undoubtedly, show by taking very slight trouble and carrying out a very simple sum in arithmetic, what the actual profits made for the year in question were. If that is so, it seems to me quite clear that the Income-tax Officer was negligent in his duty in failing to carry out that simple matter himself and to ascertain what was the effect of the books."

ASSESSMENT PROCEDURE AND EVIDENCE.

The Income-tax Authorities, as a matter of rule and practice, should always be governed in their procedure by judicial consideration. Assessment must be made on the basis of legal and not hearsay evidence although such evidences are forthcoming from members of the public. He is not justified in making an estimated assessment on a purely hearsay evidence. But where on scrutiny it is found that a substantial item is missing, the authorities are entitled to treat the whole account as unreliable: *In the matter of Briznath*, 94 I. C. 156.

RANDOM ASSESSMENT.

Section 13 does not dispense with a notice u/s 23 (2)—*In re : Rampratap Sukdayal*, 3 I.T.C. 362.

But where an assessee does not make an honest statement, he cannot complain if a random assessment is made: *In the matter of Chang lo Chwan*, 115 I. C. 697. When the principle of assessment at flat rate is not contested, its amount must be for the I.T. O. to determine—*In re : Feroze Saha*, A.I.R. 1933 P. C. 198.

ESTIMATED ASSESSMENT HOW AND WHY MADE.

Where an assessee maintains a regular method of accounting section 13 is inoperative. But where no method of accounting has been regularly employed, the question of assessment on estimate comes in. Not that the assessee is bound to follow either of the two approved methods, he is entitled to keep his accounts in his own peculiar ways provided it is regularly maintained and adopted and profits therefrom can be easily deducted. The Income-tax Officer is the sole arbiter on the question of deducing profits. Decisions are not wanting that in arriving at an assessment the Income-tax Officer should handle the matter in a judicial spirit. Section 13 further contemplates that the Income-tax Officer must have access to the books of account and he must not make any arbitrary or random assessment when the assessee produces all available evidences.

In practice, however, the income-tax authorities, while making an assessment, on a turn over basis take their stands, firstly, when the books are found unadjusted and not squared up. This means that where no profit or loss accounts are maintained and where there is no apportionment or allocation of profits or losses in the books. Although in the case of *Raghunath Mahadeo*, 86 I.C. 675 it has been said that where accounts are found not properly balanced, the Income-tax Authorities are not justified in making any estimated assessment. They cannot reject the accounts simply because the books are unbalanced.

But they are competent to take recourse to section 13 where books are found unadjusted and not closed. All that an assessee is to do is to see that books are closed up, profits and losses, if any, are entered and allocation of profits or losses made. It is not at all a difficult task to square up the books and show the gross profits in the ledger.

Secondly, when business accounts are found without any details of the closing stock, weight, etc. In these cases the Income-tax Authorities are justified to take the recourse to section 13 and to make an estimated assessment notwithstanding the fact that the assessee has maintained the system of accounting regularly.

Thirdly, when the assessee does not produce the ledger showing the volume of sales and purchases. The Income-tax Officers are entitled not only to take an estimated sale but also an estimated percentage of profits. But where sale figures are forthcoming the Income-tax Authorities must have the estimate on the actual sale figures excluding the closing stock. Where estimated assessment is made on the sale figures along with the closing balance the assessment is *ultra vires* and bad in law.

It is certainly not desirable that Income-tax authorities should charge different rates in the same locality for same business. Judicial considerations should be the guiding factor and must weigh with them. They should not deal a wholesale businessman in the same way as a businessman dealing in retails. While making an assessment under section 13 due regard must be paid to all admissible expenditures incurred by the assessee otherwise the gross profits may appear to be something which no trader can earn.

SECTION 23 (4) HAS NO APPLICATION.

Books of accounts must not be rejected simply because they are unadjusted or are not supported by vouchers. Where there is any default, assessment must be under section 23(4). But if an assessment is made under section 13, section 23(4) has no application. Neither the Income-tax Officer is competent to dispense with a notice under section 23(2) while making an assessment under section 13 as has been reported in the case of *Rampratap Sukhlal*, 122 I. C. 238: A. I. R. 1930 L. 272. Business, which in its nature, is by way of Forward contract, cannot be assessed on estimate—*Jugal Kishore Mukallal v. Commissioner of Income-tax U. P.*, 6 I. T. C. 185.

14. (1) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family.
- Exemptions of a general nature.

(2) The tax shall not be payable by an assessee in respect of—

- (a) any sum which he receives by way of dividends as a shareholder in a company where the profits or gains of the company have been assessed to income-tax ; or
- (b) such an amount of the profits or gains of any firm which have been assessed to income-tax as is proportionate to his share in the firm at the time of such assessment ; or
- (c) any sum which he receives as his share of the profits or gains of an association of individuals, other than a Hindu undivided family, company or firm, where such profits or gains have been assessed to income-tax.

TAXATION OF A HINDU UNDIVIDED FAMILY.

A Hindu undivided family is treated as a separate entity for income-tax purposes. It is taxed like an individual at a graded scale according to its total income and no account is taken of how that income is distributed amongst the individual members when such individual members are assessed to income-tax or super-tax in respect of their separate income. This applies even in cases where the amount of the income of the Hindu undivided family is less than Rs. 2,000 and is, therefore, not liable to taxation in the hands of the manager of the family. The same remarks apply to super-tax.

Section 25A will only apply if a member of a Hindu undivided family claims that it has become divided. If, however, the family prefers to go on being assessed as undivided though really divided, the Income-tax Officer has no authority to act under this section.

The taxation of the income of a Hindu undivided family thus differs from the taxation of the income of an unregistered firm since where the profits of an unregistered firm are not liable to taxation in the hands of the firm, such profits are taxed in the hands of the individual partners both for the purposes of income-tax under section 14(2) (b) and section 16 (1) and super-tax under section 55 proviso, and where the profits are taxed in the hands of the unregistered firm, the share of such profits of each partner is included in his "total income" for the purpose of determining the rate at which he shall pay income-tax on his other income [section 16(1)].

When the income, profits and gains of a member of an undivided Hindu family consist of his personal earnings and acquisitions by his own exertions, they must be treated as his self-acquired property and not as joint family property, unless they flow from a special education at the expense of the joint family over and above the ordinary education suitable to his position as a member of the joint family, or from the employment in business or otherwise of the joint funds.

Khojas (and Cutchi Memons), not being Hindus, joint families composed of such persons are not Hindu undivided families for the purposes of the Act. (Para 54 of the I. T. M.)

SCOPE AND APPLICATION.

The object of section 14 is to prevent the crown from taxing twice over. If there is any section which enables the holder of the estate in making his return to deduct the amount of maintenance paid by him to the widow of the deceased, then the effect would be to prevent the crown from taxing the income once—*in re : Veda Thamm*, A. I. R. 1932 M. 733.

Under section 5 tax is payable by a company, firm, whether registered or unregistered, individual, h. u. f. and associations of individuals. The word "total income" is the crucial point. A firm may be taxed for its total income and partners are individually liable for their separate income, the partnership profit being added up with his individual income for the purpose of rate. Take for instance a hypothetical case : *A, B and C* are partners of a firm which is assessed on income of Rs. 9000 each partner having equal share. An individual file is started against *A* for his other income which is found to be Rs. 4000. Now for the purpose of rate his share in the partnership profit is added up with his individual income which comes to Rs. 7000. *A* is liable to tax on Rs. 4000 not at the rate of 6 pies but at the rate applicable to Rs. 7000. The solitary exception to this procedure is to be found in the case of the Hindu undivided family income from which under section 14(1) read with section 14(1) of the Income-Tax Act, is not included in the total income of the individual recipient. It is further noticeable that the Act allows certain deductions under section 7(1) on the amount of Life Insurance premium under section 15, interest on securities issued tax-free by India Government or by the local Government under the provisos to section 8, on which income-tax is not chargeable ; but all such sums are included in the total income for the purpose of determining his liability to income-tax and for the purpose of rate alone.

APPLICABILITY.

The whole object of the section is to exempt from taxation in the hands of an individual that which has already been taxed

in the hands of the joint family as such. If, however, the individual receives an income *alimide* from property which has not been taxed as that of a Hindu joint family, then it would appear that the provisions of sec. 14 have no application whatever : *In the matter of Ambika Prasad Singha*, 93 I. C. 999 : 5 Pat. 20 : 7 P. L. T. 3910 : A. I. R. 1926 Pat. 256.

IMPARTIBLE ESTATE.

The income of an impartible estate is that of the incumbent for the time being and the fact that he is bound to maintain his sons does not entitle him to treat the income as that of the undivided family : *In the matter of Raja Shiva Prasad Singha*, 82 I. C. 653 : 5 P. L. T. 497 : 1924 P. H. C. C. 234 : 2 Pat. L. R. Cr. 233 : 4 Pat. 73 : A. I. R. 1924 Pat. 679.

PARTITION.

Joint Hindu trading family, entitled to a share in money-lending business in Malay States, on partition, becomes the share of one person. The person getting business does not become liable for the remittance prior to partition : *In the matter of Arunachalam Chettiar*, 1929 M. W. N. 642 : 30 M. L. W. 541 : A. I. R. 1929 Mad. 769 : 57 M. L. J. 300 (F. B.)

15. (1) The tax shall not be payable by an assessee in respect of any sums paid by him to effect an insurance on his own life or on the life of his wife, or in respect of a contract for a deferred annuity on his own life or on the life of his wife, or as a contribution to any Provident Fund to which the Provident Funds Act 1897, applies.

* * * * *

(2) Where the assessee is a Hindu undivided family, there shall be exempted under sub-section (1) any sums paid to effect an insurance on the life of any male member of the family or of the wife of any such member.

(3) The aggregate of any sums exempted under this sub-section shall not, together with any sums exempted under the proviso to sub-section (1) of section 7, and any sums exempted under sub-section (1) of section 58 (F) exceed one-sixth of the total income of the assessee.

EXEMPTIONS ON ACCOUNT OF LIFE INSURANCE.

Under the provisions of section 7(1) proviso and section 15 an abatement of income-tax is given after the assessment of

the tax has taken place, on such portion of an assessee's income as may have been—

- (i) deducted from his salary under the authority and with the permission of the Government for the purpose of securing a deferred annuity to him or making provision for his wife or children [section 7(1) proviso];
- (ii) paid by him to an Insurance Company in respect of an insurance or deferred annuity on his own life or on the life of his wife; or
- (iii) paid by him as a contribution to any of the provident funds mentioned in paragraph 20:

Provided that the total amount on which an abatement will be permitted under this provision may not exceed one sixth of the total income of the assessee.

Contributions to the Widows, Orphans and Old age Contributory Pension Fund, 1925, are exempt from income-tax since they are deducted under the authority of Government from the salaries of the soldiers concerned for the purpose of securing to them a deferred annuity and of making provision for their wives and children.

Compulsory allotments from a soldier's pay made to his wife in England under Article 886 of Royal Warrant for pay, are exempt from income-tax since they are deduced under the authority of Government for purposes of making provision whether present or future for the wife.

Deduction at source on account of contributions made by an officer to provide passage money for his widow and orphans under the Indian Military Service Family Pension Regulations and the Indian Military Widows and Orphans Fund Regulations are exempt from income-tax as the contributions are in the nature of life insurance premia. Under the rules, a certificate of health is required before an officer can contribute and the contribution which he has to pay is regulated according to the age of the officer concerned.

Out of the premia paid in respect of a policy that covers the risks of sickness and accidental injury and also the risk of death, only so much as is attributable to the risk of death (from whatsoever cause) is admissible as deduction from the income liable to tax. The portion of the premia so attributable should be settled in consultation with the Insurance Company concerned, whose formula should be accepted unless there appears to be some strong ground for modifying it.

No rebate of income-tax is allowed on any sum withdrawn by an assessee from his Provident Fund in order to pay his life insurance premium.

Rebate of income-tax in respect of a premium paid on account of life insurance is admissible to a partner of a registered firm individually whose income is taxed at source, in addition to the refund of tax to which he may be entitled under section 48.

It is to be particularly noted that the insurance in respect of which this concession is granted are insurance on the life of the assessee himself or of his wife, and not any other form of insurance whatsoever. The solitary exception is in the case of a Hindu undivided family in the case of which insurances are permissible on the life of any male member of the family or of the wife of any such member and not merely on the life of the head or manager of the family.

For the purposes of an abatement claimed by an assessee under this section insurance premia payable in sterling should be converted at the rate of exchange on force on the day on which the premium payment was made in cases where the assessee is unable to state the actual cost of remittance.

A claim for abatement under this section must, if the payment is made otherwise than by a deduction from salary, be supported either—

(a) by the original receipt of the Insurance Company or fund :

(b) where the claim is made by a servant of the Government or of a local authority, by a copy of the original receipt presented along with the original to the officer who pays the salary and attested by that officer who should, after such attestation, return the originals with a note endorsed upon it that it has been produced and allowed for, a copy being attached to the bills sent with the list of payments; or

(c) by a duplicate receipt or certificate of payment given by the Insurance Company or provident fund, provided a certificate is given that the original receipt is lost or is not forthcoming.

Where the Income-tax Officer is satisfied that none of the above prescribed documents can be produced without an amount of delay, expense or inconvenience, which under the circumstances of the case, would be unreasonable he may accept such other proof of payment of the premium as he may deem sufficient.

Abatement on account of insurance may be given effect to by the person deducting income-tax from salary at the time of payment under section 18(2).

Where the payment on account of insurance premia, etc.,

is not claimed at the time when tax is deducted from salary, it may be claimed in the assessment and in the return given by assessee under section 22 (2).

While strictly speaking abatement on account of insurance premia should only be made in assessing the income of the year in which the premia were paid, the rigid enforcement of this interpretation is likely to cause considerable inconvenience to assessee who desires that the abatement should be given effect to when tax is deducted from their monthly salary, particularly in case where the premia have been paid to foreign companies towards the end of a financial year and the receipts for the premia are not forthcoming until the following financial year. In such cases abatement of insurance premia may be allowed by officers responsible for deducting income-tax from salaries under section 18 (2) at the time of payment of the salary provided that the premia in respect of which abatement is claimed have been paid within six calendar months ending with the close of the month for which the salary is drawn.

While the officers responsible for deducting income-tax at the source under section 18 (2) of the Act should allow an abatement where claimed, they need not carry out a check to see whether the abatement claimed under this section exceeds one-sixth of the salary of the officers concerned. This can be looked after by the Income-tax Officer to whom returns are furnished under section 21. The deducting authority should, however, see that claims for such abatements are made within the period prescribed.

It is to be particularly noted that this abatement does not apply to super-tax, section 15 being made inapplicable to super-tax by section 58. (Para 56 of the I. T. M.)

Thus it is clear that premiums paid for insurance of life (endowment policy as well) are deductible expenditures for the life of an assessee or his wife and in the case of a Hindu undivided family on the life of any adult male member of the family.

Partners of a registered firm can apply for abatement when applying for refund under section 48 and by analogy a partner of an unregistered firm can apply for abatement or for set-off when he is assessed individually for his separate income.

Under sub-clause 3 of section 15 occurs, any sums exempted under the proviso to sub-section (1) of section 7. Section 58 (f) (1) runs thus: "An employee shall not be liable to pay income-tax on contribution to his individual accounts in a recognised Provident fund, in so far as the aggregate of such contribution in any year does not exceed one-sixth of his

salary in that year." In no case allowance under this head must exceed one-sixth of the total income of the assessee.

JOINT LIFE POLICIES.

Premiums on Joint life policies (*e.g.*, in respect of partners, co-directors or possibly husband and wife, are not to the allowance—*Wilson v. Simpson*, 5 A. T. C. 450. But as a matter of practice, premium paid on joint lives of husband and wife are allowed as a matter of practice. Section 15 enjoins that in order to claim exemption, the payment must be annual, but no allowance is permissible where payments are in commutation of future payments.—*Turlon v. O'Brien*, 7 T. C. 170. Life assurance policies include endowment policies—*Gould v. Curtis*, 29 T. L. R. 469.

16. (1) In computing the total income of an assessee sums exempted under the Exemptions and exclusions in determining the total income. proviso to sub-section (1) of section 7, the second and third provisos to section 8, sub-section (2) of section 14 and section 15, shall be included.

(2) For the purposes of sub-section (1), any sum mentioned in clause (a) of sub-section (2) of section 14 shall be increased by the amount of income-tax payable by the company in respect of the dividend received.

TAX DEDUCTED OR COLLECTED AT SOURCE TO BE INCLUDED IN INCOME.

Section 16(2) which provides that the amount received by a shareholder in a company by way of dividend shall be increased by the amount of income-tax payable by the company in respect of the dividend received and section 18(4) which provides that where income-tax is deducted at the source from salaries and interest on securities, the tax so deducted shall, for the purposes of computing the income of an assessee, be deemed to be income received, have been inserted in order to make it clear that in the cases of taxation at the source and of the deduction of tax at the source it is the gross amount of the income (*i.e.*, including the tax deducted) which is to be taken into account in determining the rate at which an assessee shall be liable to income-tax on the rest of his income and also his income for liability to super-tax. (Para 57 of the I. T. M.)

Proviso (2) of section 16 shortly lays down that in computing total income of an assessee, the amount of dividend received by him must be added up with the income received for the purpose of rate. Where the assessee receives dividend from a company, he is charged at a maximum rate and hence

he can apply for refund under section 48 provided he has no income assessable at the maximum rate. But where he has got a personal file in his name, the best course open to him is to apply for abatement for the amount received as a dividend. For such a set off of rebate is permissible under the prescribed rule 19.

BONUS SHARES—INCOME OR CAPITAL.

An assessee, a shareholder in a company, who has kept aside certain sums to be distributed amongst the directors, objected to such payment but eventually agreed after some years, paid a lump sum for his share in the amount reserved. The amount is part of his income in the year of receipt and does not represent assessee's profits for the previous year : *In the matter of Vernan Milward Bason* 12 I. C. 718 : 55 Cal. 987 : 32 C. W. N. 574.

CALCULATION OF TOTAL INCOME.

Total income of an individual partner implies actual income in the previous year without deducting taxes and receipts. Subsequent increase of his share does not furnish a basis of his income : *In the matter of Philip Saddan Mellor*, 81 I. C. 489 : 48 Bom. 504.

17. Where owing to the fact that the total income of any assessee has reached or exceeded a certain limit he is liable to pay income-tax or to pay income-tax at a higher rate, the amount of income-tax payable by him shall, where necessary, be reduced so as not to exceed the aggregate of the following amounts, namely :—

Reduction of tax when margin above a certain limit is small.

- (a) the amount which would have been payable if his total income had been a sum less by one rupee than that limit, and
- (b) the amount by which his total income exceeds that sum.

RESTRICTION OF INCOME-TAX WHERE MARGIN OF INCOME ABOVE A CERTAIN LIMIT IS SMALL.

Section 17 is designed to remedy the anomaly which previously existed where an assessee with an income just in excess of one of the stages in the Finance Act and therefore liable to pay income-tax at a higher rate than if his income were just below that stage, found himself, after the payment

of the tax, worse off than he would have been, had his taxable income been below that stage.

Income.	Tax payable if section 17 had not been passed.	Tax payable under section 17.
1,999	Nil.	Nil.
2,000	52- 1	1-0
2,020	52-10	21-0
4,999	130- 3	130-3
5,000	156- 4	131-3

The marginal relief allowed under section 17 and the exemption referred to in section 7 (1), proviso to section 8, and section 15 (1) should not be regarded as alternatives. The correct method of working the two sections concurrently is as illustrated in the following example :—

If a man's total income is Rs. 5,010 and he pays Rs. 100 as Insurance premia, the tax he should pay is on Rs. 4,999 minus Rs. 100 (=Rs. 4899) at five pias plus Rs. 11. The tax payable will be the same if his total income is Rs. 5,010 of which Rs. 100 is derived from tax-free securities or from an unregistered firm that has been assessed to income-tax, but if the Rs. 100 were derived from a registered firm, or from dividends the total tax to be suffered would be Rs. 141-3-0 against which credit would have to be given for the tax indirectly suffered on the share of the firm's income or the dividend Rs. 9-6-0 so that the nett sum payable would be Rs. 131-13-0.

The following points should be borne in mind in applying section 17 where a portion of the assessee's income is derived from an unregistered firm that has paid income-tax :—

- (i) Income-tax is not "payable" by a partner in a firm on his share of the firm's income.
- (ii) Relief is to be given to an assessee in respect of the "income-tax payable by him".
- (iii) Section 17 is to be applied (a) "where necessary", (b) in order to "reduce" the tax and (c) so that the result of an assessee's total income exceeding a sum after which the rate of tax rises, shall not be that the extra tax due to the rise in the rate is greater than the excess of the total income over the maximum sum liable to the lower rate. The section is not to be applied where it is not necessary to do so, that is, where the result of applying it would not be to reduce the tax. It may be noted in this connection that surcharge is not leviable where the assessee is entitled to marginal relief.

CHAPTER IV.

Deductions and Assessment.

18. (1) *Repealed*

(2) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax *but not super-tax* on the amount payable at the rate applicable to the estimated income of the assessee under this head :

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct.

(2a) Notwithstanding anything hereinbefore contained, for the purpose of making the deduction under sub-section (2), there shall be included in the amount payable any income chargeable under the head "Salaries" which is payable to the assessee out of India by or on behalf of Government, and the value in rupees of such income shall be calculated at the prescribed rate of exchange.

(3) The person responsible for paying any income chargeable under the head "Interest on securities" shall, *unless otherwise prescribed in the case of any security of the Government of India*, at the time of payment, deduct income-tax *but not super-tax*, on the amount of the interest payable at the maximum rate.

Provided that where the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total income of a recipient will be less than the minimum liable to income-tax or will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income herein referred to to such recipient shall, until such certificate is cancelled by the Income-tax Officer,

pay the income without deduction or deduct the tax at such less rate, as the case may be.

(3A) Where the Income-tax Officer has reason to believe that the total income of any person residing out of British India to whom any interest not being 'Interest on Securities' is payable, will in any year exceed the maximum amount which is not chargeable with super-tax under the law for the time being in force, he may, by order in writing, require the person responsible for paying such interest to such person to deduct at the time of payment income-tax and super-tax at the rates determined by the Income-tax Officer to be applicable to the total income of such person in that year.

(3B) Where the person responsible for paying any interest not being 'Interest on Securities' to any person pays to that person in any year an amount of such interest exceeding in the aggregate the maximum amount which is not chargeable with super-tax under the law for the time being in force, the person responsible for paying such interest shall, if he has not reason to believe that the recipient is resident in British India, and no order under sub-section (3A) has been received in respect of such recipient, deduct at the time of payment income-tax on the total amount of such interest at the rate appropriate to such total, and super-tax on the amount by which such total exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess.

*(3C) Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of British India and that the total income of such person will in any year exceed the maximum amount which is not chargeable to super-tax under the law for the time being in force, he may, by order in writing, require the principal officer of the company to deduct at the time of payment of any dividend from the company to the shareholder in that year super-tax at such rate as the Income-tax Officer may determine as

* Inserted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

being the rate applicable in respect of the income of the shareholder in that year.

*(3D) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by a company (together with the amount of any income-tax payable by the company in respect thereof) exceeds the maximum amount of the total income of a person which is not chargeable to super-tax under the law for the time being in force, and the principal officer of the company has not reason to believe that the shareholder is resident in British India, and no order under sub-section (3C) has been received in respect of such shareholder by the principal officer from the Income-tax Officer, the principal officer shall at the time of payment deduct super-tax on the amount of such excess at the rate which would be applicable under the law for the time being in force if the amount of such dividend or dividends (together with the amount of such income-tax as aforesaid) constituted the whole total income of the shareholder ;

(4) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received.

(5) Any deduction made in accordance with the provisions of this section shall be treated as a payment of income-tax**or super-tax* on behalf of the person from whose income the deduction was made, or of the owner of the security, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act :

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund.

(6) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed

* Inserted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

time by the person making the deduction to the credit of the Government of India, or as the Central Board of Revenue directs.

(7) If any such person does not deduct and pay the tax as required by **or under* this section, he shall, without prejudice to any other consequence which he may incur, be deemed to be †*an assessee* in default in respect of the tax.

Provided that the Income-tax Officer shall not make a direction under sub-section (1) of section 46 for the recovery of any penalty from such person unless satisfied that such person has wilfully failed to deduct and pay the tax.

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

(9) Every person deducting income-tax **or super-tax* in accordance with the provisions of sub-section (3), **(3A), (3B), (3C) or (3D)* shall, at the time of payment of interest, furnish to the person to whom the interest is paid a certificate to the effect that income-tax **or super-tax* has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed.

DEDUCTION OF THE TAX AT SOURCE.

Section 18 of the Act provides for the deduction of tax at the source as distinguished from taxation at the source referred to in paragraph 11. It provides for the tax being deducted by the persons responsible for making payment of "salaries" or "interest on securities" before such payments reach the hands of the recipients. The tax so deducted is paid over by the persons making the deduction to the credit of the Government of India within the period specified in rule 10 along with a statement giving the details shown in rules 11 and 12. Such deductions of income-tax are under sub-section (5) of section 18, treated as payments of income-tax on behalf of the persons from whose income or interest the deduction was made and credit is given to them in the assessment of their income if an

*Substituted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

assessment is made of their other income. The form of return of income that has to be made under section 22(2) prescribed in rule 19, therefore, provides for the tax previously charged upon the income being set off against any additional charge, while section 48(3) provides as an alternative for a refund in cases where the rate deducted is greater than that applicable to the total income of the assessee.

Section 18(2)(a) of the Act provides that all payments on account of salary made out of India by and on behalf of Government shall be included in the amount on which tax is deducted at source in India. All leave salary paid in the United Kingdom or a Colony to Government servants on leave in the United Kingdom or the Colony has been exempted from tax. (*Vide* paragraphs 17 and 27.) Any sterling overseas pay or other sum that may be paid in the United Kingdom or a Colony to an officer on leave in the United Kingdom or the Colony on account of his salary while on leave is, therefore, exempt from income-tax. The fact that a part of the leave salary is drawn in India does not affect the exemption of the balance drawn in the United Kingdom or a Colony. The part of the leave salary that is paid in sterling in the United Kingdom or a Colony to an officer on leave in the United Kingdom or a Colony should not, therefore be included in the income from which tax is deducted at source by the officer paying him the rupee portion of the leave salary in India. The same principle applies to other payments falling under "salaries" within the meaning of section 7 of the Act made partly in India and partly out of India and exempt under any notification issued under section 60 of the Act. The salary paid in the United Kingdom or a Colony to an officer on duty in the United Kingdom or a Colony is exempt irrespective of whether it includes sterling overseas pay or not. So also vacation salaries paid in the United Kingdom or a Colony when on vacation therein.

DUTIES AND LIABILITIES.

Any person required to make a deduction under section 18 who fails to do so, may himself, under sub-section (7) be deemed to be personally in default in respect of the tax while he is also liable to be prosecuted for an offence punishable under section 51 (a).

Persons making deductions at the source are indemnified for the deduction under section 65.

The provisions of section 18 do not apply to super-tax (section 58).

The provisions of this section obviously cannot apply to cases where the payments are made outside British India as,

for example, the payment of "interest on securities" in Indian States or in foreign countries or the payment of "salaries" by foreign employers to residents in British India. It is for this reason that section 19 of the Act specifies that in any case where income-tax has not been deducted in accordance with the provisions of section 18, the tax is payable by the assessee direct. This provision covers, not only cases where the employer or the person paying "interest on securities" does not reside in British India, but also cases where owing to an assessee's salary being less than Rs. 2,000, income-tax has not been deducted, (Para 59 of the I. T. M.). U/s 18 an employer is bound to deduct Income-Tax on salaries, but is he bound to deduct tax on interest derived from company's contribution to the Provident Fund of the employees. The Rangoon High Court holds that it is deductible when actually paid, but it is submitted with the greatest respect that in view of section 4(3) (iv) (v), the interest on securities held by Provident Funds to which the Provident Funds Act applies, is exempt from tax. Capital sums paid as accumulated balances at the credit of the subscribers to such funds are exempt from tax and are not included in computing the "total income". The words "accumulated balance include not only contributions but also interest thereon.—*The Rangoon High Court case of Bombay Burma Corporation*, 143 I.C. 532 does not seem to be a proper decision.

RULE 10.

All sums deducted in accordance with the provisions of section 18 of the Act shall be paid by the person making the deduction to the credit of the Government of India on the same day as the deduction is made in the case of deduction by or on behalf of Government, and within one week from the date of such deduction in all other cases :

Provided that the Income-tax Officer may, in special cases, and with the approval of the Assistant Commissioner, permit a local authority, company, public body or association, or a private employer to pay the income-tax deducted from salaries quarterly on June 15th, September 15th, December 15th, and March 15th.

RULE 11.

In the case of income chargeable under the head 'salaries' where deduction is not made by or on behalf of Government, the person paying the salary shall pay to the credit of the Government of India by remitting the amount to the Income-tax Officer concerned or to such officer as he may direct and shall send therewith a statement showing the name of the employee from whose salary the tax has been deducted, the period for which the salary has been paid, the gross amount

of the salary, the deduction for a provident fund or insurance premia and the amount of tax deducted.

RULE 11-A.

The prescribed rate of exchange for the calculation of the value in rupees of any income chargeable under the head 'salaries' which is payable to the assessee out of India by or on behalf of Government shall be the rate notified by the Controller of the Currency in respect of the recovery of contributions to the Indian Civil Service Fund for the month in which such income is payable.

RULE 12.

In the case of income chargeable under the head 'interest on securities', where the deduction is not made by or on behalf of Government, the person responsible for paying the interest shall pay to the credit of the Government of India by remitting the amount to the Income-tax Officer concerned or to such officer as he may direct with a statement showing the following particulars :—

- (i) Description of securities.
- (ii) Numbers of securities.
- (iii) Dates of securities.
- (iv) Amounts of securities.
- (v) Period for which interest is drawn.
- (vi) Amount of interest, and
- (vii) Amount of tax.

RULE 13.

The certificate to be furnished under section 18(9) of the Act by any person paying interest chargeable to income-tax on any security of the Government of India or of a local Government shall be in the following form :—

Certified that Rs.	being income-tax at
the rate of pies per rupee has	been deducted by draft
of this date from Rs.	being the amount of
interest	for Rs. on
for Rs.	standing in the name
for Rs.	193

Superintendent or Principal Officer.

To be signed by claimant

I hereby declare that the securities on which interest as

above specified has been received were my own property and
were in the possession of _____ at the time
when income-tax was deducted.

Date

Signature.

(N. B. The securities to be produced when required in support of any claim).

RULE 13-A.

The certificate to be furnished under section 18(9) of the Act by the person paying any interest on debentures or other securities for money issued by or on behalf of a local authority or a company shall be in the following form :—

Name of Local Authority
Company

Address

To

$\frac{I}{We}$ hereby certify that Rs. _____ being income-tax

at the rate of _____ pias per rupee has been deducted from
Rs. _____ being the amount of interest at the rate of
per cent. per annum due _____ on debentures Nos.
of Rs. _____ each of the _____ and that it has been
or will within the prescribed period, be paid by $\frac{me}{us}$ to the
Government of India, at

Principal Officer or Managing Agents.

193.

(To be signed by the claimant.)

I hereby declare that the securities on which interest as
above specified has been received were my own property and
were in the possession of _____ at the time when
income-tax was deducted.

Signature

Date.

(N. B. The securities to be produced when required in support of any claim).

The provision in section 18(2) further invests the officer responsible for deduction to reduce or increase the tax if on scrutiny any deficiency or excess is observed. The deduction of tax from salaries under section 18 at the time of payment of salary must be made at the rate applicable to the estimated income for the year under assessment, *rule* 83 I. C. 20

SUB-SECTION 2(A).

It provides that all payments under head "salaries" made outside India are to be included in the amount when tax is deducted at source. This brings us to leave salaries outside India. By an Executive fiat leave salaries paid in the United Kingdom, at Colonial Estate have been exempted. In addition to the exemption mentioned in section 4 clause (3) further exemptions have been made by the Governor-General in Council in exercise of powers conferred by section 60 of the Act (*vide* para 17 of the I. T. M.)

LEAVE ALLOWANCE.

Thus it is clear that leave allowance or salaries paid to Government officers, officers of local authorities, employees of company or private employees on leave are not chargeable. Similarly pensions payable to Government officers, employees of company etc., outside British India are not taxable. Salaries of High Court Judges or Chief Court Judges, Judicial Commissioner and other officers of Government are exempt when on vacation at the United Kingdom or on Colony. It does not make any difference if it includes sterling overseas pay or not.

DEFAULT.

Persons responsible for deduction are under section 18 personally liable for any default in respect of the tax and is also liable to prosecution under section 51(a). But a person making such deduction is indemnified for any deduction by virtue of section 65. *The provisions to section 18 are inapplicable so far as super-tax is concerned.*

ALL EMPLOYERS SHALL DEDUCT TAX AT SOURCE OF THEIR EMPLOYEES IF ASSESSABLE.

It is obligatory on the principal officers to make deductions under section 18; but the principal officer is authorised to allow abatement on insurance premium or such a rebate can be claimed on the following year by way of refund or set off as the case may be. The provisos of this section are inapplicable to cases where payment is made out of British India, *e.g.*, interest on securities in foreign soil or in Native State, payment of salaries to employees of foreign ruler residing in British India. But under section 19 these are chargeable to income-tax—no matter resident or not. Payments made for some oblique or improper purpose out-side the course of business is a payment for which no deduction is permissible—*In re : Anglo Persian Oil Co.*, A. I. R. 1933 Cal. 777.

DEDUCTION ON INTEREST ON SECURITIES.

No deductions are made at source in advance in the case of Government of India Treasury Bills. Section 18, clause (3) provides that deduction of tax on interest on securities shall be made at the maximum rate with powers to apply for refund under section 48, clause (3). It is incumbent on persons responsible for deduction to issue to all security holders a certificate under rule 13 and 13-A already referred above, mentioning therein the amount deducted and the rate applicable so that in the case of excess rate the certificate-holder can apply for refund.

It is the usual practice that security-holder very often hand over all the security papers and bonds to the bankers for collection. In such cases, certificate to a bank is essential and the I. T. O. must have certificate from the bank in the following manner :

We hereby certify that interest on the various securities specified on the back hereof was collected by us on behalf of _____ and that we received payment or were credited with the proceeds thereof (less income tax) as stated on the other side amounting to Rs.

The securities specified are covered by certificates issued to the bank under section 18(9) of the Income-tax Act. 1922.

Signature of Banker.

Date.

Address.

To be signed by the claimant.

I hereby declare that the securities on which interest as above specified has been received are my own property and were in the possession of _____ at the time when income-tax was deducted.

Signature.

Date.

I therefore pray for a refund of Rs.
under 'salaries'

Rs. under 'securities'
Rs. dividends from companies
Rs. under 'share of profits of the Registered
Firm' known as of which I am a partner.

Signature.

I hereby declare that I am a resident in British India and that what is stated in the application is correct.

Dated 19

Signature.

A claim for refund is to be made to the Income-tax authority under rule 39 within whose jurisdiction the assessee resides or is assessed. This procedure will simply apply to matters coming under the head "refund".

But in the case of any non-resident applicants, application for refund is to be made to the Income-tax Officer appointed by the Central Board of Revenue (*vide* rule 39).

It is not improbable that as a result of taxation at the maximum rate, the Income-tax Officer may, very often, be approached with application for refund. The Income-tax Officer where he is convinced that the rate is obviously higher than is applicable to his total income and where chance of variation of rates is little, can issue a certificate in the following form :—

Income-tax Office,

Dated.....193

To

I hereby authorise (1).....to deduct income-tax at the rate of (2).....pies in the rupee when paying the interest on the following securities to their present holder (3).....This authorisation will remain in force until cancelled by me.

Description of securities.

Income-tax Officer.

1. Name and address of person paying interest ;
2. Rate of Income-tax sanctioned ;
5. Name of person receiving interest ;

Renewal of certificate is not necessary if not cancelled.

Application for refund by the resident of Indian State on securities are to be made to the Income-tax Officer non-resident refund circle, Bombay (as in the case of resident outside India.)

In the case of applicants resident of Indian States, refund voucher may be encashed at the Political Treasury of Government of India or at the prescribed British Indian Treasury.

SECURITIES HELD BY INDIAN STATES OR BY RULING
PRINCES AND CHIEFS.

An Indian State is not assessable to any income-tax or super-tax except under the Government Trading Taxation Act that is to say where the State carries on a Trade or Business. Interest on securities held by Indian States, is therefore not taxable. But if such securities are held by Ruling Princes or Chiefs individually, *i.e.*, not as the property of State they are taxable. In applying this principle all authorities responsible for the payment of interest on securities should assume that Government securities held in the names of Rulers of Indian State in the special non-transferable form prescribed by rule 38 of the Indian Securities' Rules, 1920, belonged to the State and not to the ruler in the personal capacity. In respect of other securities held by the Rulers, *i.e.*, to say, Government securities in the ordinary form of securities other than Government securities, it should be assumed, in the absence of proof to the contrary that the securities are the personal properties of the Princes and therefore liable to tax.

Any such claim must be pressed through the Political Agent or the resident with a certificate from the Chief Financial authority to the Income-tax Officer who can grant the certificate or in case of any difficulty he must refer to the Commissioner who may refer to the Central Board of Revenue if necessary.

19. In the case of income chargeable under *any head other than 'salaries' interest on securities* and in any case where income-tax Payment in other cases. has not been deducted in accordance with the provisions of that section, the tax shall be payable by the assessee: direct.

NOTES.

Income-tax under section 18 is payable in advance and is deducted at source; in other cases not coming under section 18, assessment is to be made direct.

19A. The principal officer of every company shall, on or before the 15th day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses, as entered in the register of share-holders maintained by the company, of the share-holders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each such share-holder.

SCOPE.

This section is evidently intended to make the share-holders liable for super-tax by adding up the dividend. It is obligatory on the principal officer of every Company to furnish the Income-tax Officer with the names and addresses of share-holders receiving dividends in the prescribed form. Rule 42 lays down "a return shall be furnished by the principal officer of a company under section 19A in respect of a dividend or aggregate dividends if the amount thereof exceeds Rs. 10,000."

Rule 43 runs thus: "the return by the principal officer of a company under section 19A shall be in the following form and shall be delivered to the Income-tax Officer who assesses the company.

The principal officer is liable to conviction and for criminal prosecution as set forth in sections 51 and 52 of the Act when there has been a default in filing the return or where a false return has been filed.

20. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed.

Certificate by company to shareholders receiving dividends.

SCOPE.

A person receiving dividend is entitled to a certificate from the principal officer of a company to the effect that income-tax has been and will be paid on the profits by the company. This is mandatory on the part of the principal officer and failure to furnish the persons entitled to it, makes the persons (principal officer) liable under section 51.

FORM OF CERTIFICATE.

Rule 14 prescribes the form of certificate and it shall be in the following form :—

Name of company.

Address of company.

Date

Warrant for Rs.

(in words and figures)

being dividend at the rate of Rs. (in words and figures)...

.....per share for the.....ending on the.....

.....day of.....19.....on.....shares in this

company, registered in the name of.....This

dividend was declared at the.....meeting held on the

.....193 .

I certify that the income-tax on the entire
We on such part, as is liable to
 be charged to Indian income-tax of the profits and gains of
 the company, of which this dividend forms a part, has been or
 will be, duly paid by $\frac{me}{us}$ to the Government of India.

Signature.

Office

(To be signed by the claimant)

I hereby certify that the dividend above mentioned relates

to shares which were my own property at the time when the dividend was declared and were in the possession of.....

Date

Signature.

UTILITY OF CERTIFICATE.

The said certificate is essential for claiming refund under section 48, clause (1) or for a set off under section 24 where he is assessed individually; without the certificate attached, the claim cannot be pressed. Rule 14 lays down the form of the certificate but there is no bar in accepting a certificate if it is in conformity with the prescribed certificate in Rule 14. The Income-tax Officer must always ask for the certificate in original but in case of loss or destruction, duplicates may serve the purpose if the Income-tax Officer is convinced that no refund has been granted for it.

DIFFERENCE IN RULES 13 AND 14.

In rule 13 there is a mention of the rate at which deduction has been made whereas there is no such mention of rate in Rule 14 obviously for the reasons that dividends are distributed from the profits during the course of the financial or commercial year when the rate is not known.

“The form of certificate also provides for cases such as that of the tea companies which do not pay income-tax on the entire profits and gains distributed as dividend. The amount of income-tax so assessed to be payable by the company in respect of the dividend declared has under the provision of section 16 (2), to be added to the net dividend received in calculating the total income of the individual share-holder”.

20A. The person responsible for paying any interest ^{Supply of informa-} not being ‘interest on securities’ ^{tion regarding interest.} shall, on or before the fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount not being less than one thousand rupees as may be prescribed in this behalf, together with the amount paid to each such person.

For legal obligations of the company—See Miscellaneous portion, where the subject has been dealt at length.

The new Amendment calls upon any person responsible for paying interest exceeding Rs. 1000 to furnish the I. T. O. with

names and addresses of all persons to whom such interest has been paid.

21. The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association and every private employer shall prepare, and, within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form, a return in writing showing :—

- (a) the name and, so far as it is known, the address, of every person who was receiving on the said 31st day of March, or has received during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed ;
- (b) the amount of the income so received by each such person, and the time or times at which the same was paid ;
- (c) the amount deducted in respect of income-tax from the income of each such person.

ANNUAL RETURN OF EMPLOYERS.

Under section 21 read with rules 15, 16 and 17 a return in the form prescribed in rule 17 must be made of all employees deriving an income of Rs. 2000 per annum or over, by the Government officer mentioned in rule 15, by every private employer and by, in the case of local authorities, companies or other public bodies or associations, the principal officer or the prescribed person. The provision that in the last mentioned case the return is to be made either by the principal officer or the prescribed person is designed to avoid difficulties experienced particularly in the case of companies, owing to the provision of the Act of 1918 which required that the return should always be made by the principal officer. Where a company, for example, has got several branches of business, it may be more convenient for the company that the return under this section should be made not by the principal officer at the headquarters of the company but by officers at different branches, since this particular return has, as a rule

to be made to the local I. T. O. *i.e.*, to the I. T. O. of the place where the employees happen to reside. The liability for making this return remains under section 21 with the principal officer unless another person is prescribed in the case of particular companies. Such a person must be prescribed by means of a rule made by the Central Board of Revenue.

WHY RETURN IS CALLED FOR.

The object of the return is to enable the Income-tax Officers to see that the tax has been deducted at the source under section 18 clause (2), to arrange for adjustments where the collections at the source have not been correctly to assess salaried persons under section 23, whether the tax has been collected at the source or not, where the salaried persons have other income than salary.

ANNUAL RETURN TO BE DELIVERED TO THE INCOME-TAX OFFICER.

This section prescribes that the return must be delivered to the I. T. O. but does not state to what particular I. T. O. return should be made. As every I. T. O. has, under the provisions of section 64, clause 4, all powers conferred by or under the act on an I. T. O. in respect of any income accruing or arising or received within the area for which he is appointed, irrespective of whether the particular income is assessed by him or not, in most cases it is convenient that this return should be made to the I. T. O. of the area in which the employees reside, but in some cases it may be more convenient that the return should be made to the I. T. O. of the area in which the headquarters of a wide spread business is situated. It is for the Income-tax Commissioner in each doubtful case to decide to what particular I. T. O. this return should be sent.

RETURN BY EMPLOYEE.

The return prescribed under this section is the return of all employees who during the period of 12 months ending 31st March last were in receipt of salary of not less than the prescribed amount of Rs. 2000, and the return must be furnished to the I. T. O. in the proper form before the 1st of May. *The obligation to make this return is a statutory one and no preliminary notice or request from the I. T. O. is required.* Failure to furnish this return is punishable under section 51, clause (c) of the Act.

RULE 15.

This rule prescribes that particular officers under Government service shall have to submit annual return of their employees.

RULE 16.

The minimum income under the head salaries referred to in section 21, clause (a), shall be Rs. 2000 per annum.

RULE 17.

The return to be delivered to the Income-tax Officer under section 21 of the Act shall be in the following form :—

- 1 Serial Number.
- 2 Name of person.
- 3 Postal address of residence.
- 4 Appointment or nature of employment.
- 5 Total amount of salary, wages, annuity or pension paid during the year ending on 31st March 19 .
- 6 House allowance or value of rent-free quarters.
- 6A Amount of bonus, gratuity, fees, commission, perquisites or allowances (other than those shown in column 6) or profits in lieu of or in addition to salary or wages (each to be shown separately).
- 7 Total of columns 5, 6 and 6A.
- 8 Deduction on account of Provident and other funds [proviso to section 7 (1)].
- 8A Deduction on account of Life Insurance premia (section 15).
- 9 Net amount chargeable.
- 10 Amount of tax payable.
- 11 Reduction under section 17.
- 12 Amount of tax deducted.
- 12A Whether persons contribute to a recognised Provident Fund (Chapter IXA).
- 13 Remarks.

I certify that the above statement contains a complete list of the total amounts paid by _____ to all persons who were receiving income on the 31st day of March 19 , at the rate of Rs. 2,000 per annum, or have received during the year ended on that day not less than Rs. 2,000 in respect of salary, wages, annuity, pension, gratuity, fees, commissions, perquisites, or profits in lieu of or in addition to salary or wages, and that all the particulars stated are correct.

*Signature of person by whom
the return is delivered.*

Date

22. (1) The principal officer of every company shall prepare, and, on or before the fifteenth day of June in each year, furnish to the Income-tax Officer a return, in the prescribed form and verified in the prescribed manner, of the total income of the company during the previous year :

Return of income. Provided that the Income-tax Officer may, in his discretion, extend the date for the delivery of the return in the case of any company or class of companies.

(2) In the case of any person other than a company whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer shall serve a notice upon him requiring him to furnish, within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income during the previous year.

(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made, and any return so made shall be deemed to be a return made in due time under this section.

(4) The Income-tax Officer may serve on the principal officer of any company or on any person upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require :

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

RETURN OF INCOME BY COMPANIES.

The return of the total income of the company must be

furnished to the Income-tax Officer before the 15th day of June in each year in the form prescribed in rule 18, which also contains the form of verification of such return. The obligation to make this return is a statutory obligation upon the principal officer of the company, and it is not necessary that the Income-tax Officer should send any preliminary notice or request to the company or the principal officer concerned. Failure to furnish this return is punishable under section 51 clause (c) of the Act. (I. T. M. para 65.)

Thus a return of a company is a statutory obligation and as such is mandatory. The date from 15th June to some other date may be extended by the I. T. O. if it is essential.

RULE 18

The return of total income of companies required under section 22 (1) shall be in the following form and shall be accompanied by a copy of the profit and loss account referred to therein :—

INCOME, PROFITS OR GAINS FROM BUSINESS, TRADE, COMMERCE.

	Rs.	As.	P.
Income, profits, or gains as per profits and loss account for the year ended			
<i>Add</i> —Any amount debited in the accounts in respect of—			
1. Reserve for bad debts			
2. Sums carried to reserve for provident or other funds			
3. Expenditure of the nature of charity or presents			
4. Expenditure of the nature of capital			
5. Income-tax or Super-tax			
6. Rental value of property owned and occupied			
7. Cost of additions to or alternations, extensions, improvements of, any of the assets of the business			
8. Interest on reserve or other funds			
9. Losses sustained in former years			
10. Losses recoverable under an insurance or contract of indemnity			
11. Depreciation of any of the assets of the business			
12. Expenses not incurred solely for the purpose of earning the profits			
Total			
<i>Deduct</i> —Any profits included in the accounts already charged to Indian income-tax and the interest on securities of the Government of India or of local Government declared to be income-tax free.			
Balance			

It the company owns any property not occupied for the purposes of the business a statement in the form prescribed in Schedule A to Rule 19 should be attached with particulars of the credit and debit on account of such property entered in the accounts.

DECLARATION.

I, the Secretary, etc.,
 [see section 2(12) of the Act] of the
 (name of company) declare that the information against each head in this return is correctly given as shown in the books of the company as also in the accounts which have been duly audited by the auditors of the Company and which have been adopted by the share-holders of the company.

(Signature).

Dated 19 . (Designation)

(2) The company shall also attach to the return a statement showing the sums charged in the accounts under the provisions of section 58K (2).

RETURN OF INCOME BY PERSONS OTHER THAN COMPANIES.

The form of return of total income of individuals, firms or Hindu undivided families is prescribed in rule 19 which also prescribed the form of the verification of such return. In this case no statutory obligation rests upon the individuals, firm or Hindu undivided family to make such a return until a notice has first been served by the Income-tax Officer requiring such a return. The notice must allow a period of thirty days for the furnishing of return. If, however, on receipt of such a notice the return is not furnished within due time, such failure to make a return is punishable under section 51, clause (c) of the Act. (I. T. M. para 66).

FIGURE OF LOSS HOW RETURNED.

A return under section 22 on which the word "loss" has been written, without any figures, in which "nil" has been entered against each item is not a valid return. *Ramkishan Das Bagri v. Commissioner of Income-tax, Bengal*, 2 Srinibasa's tax cases page 324. If, therefore, such return is filed by any person, the Income-tax Officer can proceed after issuing a notice under section 22 (4) if he finds that such a course is justifiable (P. Reg. 65 I. T. M.)

RULE 19.

The return of total income for individuals, firms, Hindu undivided families and other associations of individuals not being companies required under section 22(2) shall be in the following form :—

STATEMENT OF TOTAL INCOME DURING THE PREVIOUS YEAR.
Sources of income.

	Amount of profits or gains or income dur- ing the previous year.	Tax al- ready charged on the income.
1.	2. Rs.	3. Rs.
1. Salaries (including wages, annuity, pension, gratuity fees, commission, allowances, perquisites including rent-free quarters) or profits received in lieu of, or in addition to salary or wages		
1A. The contributions made by an employer to the account in a recognised provident fund of the person making the return		
1B. The interest according to the account mentioned in 1A which is not exempt from income-tax [section 58F (2)]		
2. Interest on securities (including debentures) already taxed		
3. Interest on securities of the Government of India or local Governments declared to be income-tax free		
4. Property as shown in detail in schedule A.		
5. Business, trade, commerce, manufacture, or dealings in property, shares or securities (details as in note 5)		
6. Profession		
7. Dividends from companies (net)		
8. Interest on mortgages, loans, fixed deposits current accounts, etc., not bearing income from business		
9. Ground rent		
10. Any source other than those mentioned above including any income earned in partnership with others		
	Total	
Deductions claimed :—		
(a) on account of insurance premia		
(b) on account of contributions to a provident fund to which the provident Funds Act applies		
(c) on account of contributions to a recognised provident fund [section 58A (a)]		
(d) others		

I declare that to the best of my knowledge and belief the information given in the above statement is correct and complete, that the amounts of income shown are truly stated and relate to the year ended and that no other

income accrued or arose or was received by

<u>me</u> <u>the firm</u> <u>the family</u> the association	“during the said year” and that	I <u>the firm</u> <u>the family</u> the association
--	---------------------------------	--

had during the said year no other sources of income.

Date

Signature.

N. B. (a) Income accruing to you outside British India received in British India is liable to taxation, and must be entered by you in the form.

(b) All income from whatever source derived must be entered in the form, including income received by you as a partner of a firm.

Note 1.—In column 2 should be shown the gross amount of salary and not the net amount after deductions on account of income-tax, provident funds, etc.

Note 2.—“Interest on securities” means the interest on promissory notes or bonds issued by the Government of India or a local Government, or the interest on debentures or other securities for money issued by or on behalf of a local authority or company. Where income-tax has been deducted from the interest, or where the interest has been paid income-tax free, the amount of tax so deducted or paid should be added to the amount of interest actually received, and the gross amount so arrived at should be entered in column 2 of the statement. The term “interest on securities” does not include interest on fixed deposits or mortgages on other loans, which have to be shown under heading 8.

The interest on securities of the Government of India or of local Governments declared to be income-tax free should be shown under head 3. These which are not declared to be income-tax free should be included under this head.

Entries under this head must be supported by the certificate issued by the person or company paying the interest under section 18(9) of the Act.

Note 3.—(a) The income-tax payable on the interest receivable on a security of a local Government issued income-tax free is payable by the local Government and not by the holder of the security.

(b) Only the interest on securities of the Government of India or of local Government declared to be income-tax free should be entered against this head. Such interest will not be charged to income-tax but it must be included in the statement of total income in order to ascertain the rate of income-tax chargeable on other income. *It is chargeable to super-tax.*

(c) Particulars of any interest on securities issued by other authorities and stated to be free of income-tax should be entered against head 2, as income-tax on such interest is actually paid by these authorities on behalf of the recipients.

Note 4.—The tax is payable under this head in respect of the *bona fide* annual value of any buildings or lands appurtenant thereto, of which you are the owner, other than such portions of such buildings and lands as you may occupy for the purpose of your business.

Note 5.—(a) Whether you keep your accounts on the mercantile accountancy or book profits system, you must file a return in the following form :

Income, profits or gains from business, trade, commerce.

Income, profits or gains as per Profit and Loss Account for the year ended _____ 19 .	Rs.	A.
<i>Add</i> —any amount debited in the accounts in respect of—		
1. Reserve for bad debts		
2. Sums carried to reserve for provident or other funds		
3. Expenditure of the nature of charity or presents		
4. Expenditure of the nature of capital		
5. Income-tax or super-tax		
6. Drawings or salary of proprietor or partners ..		
7. Rental value of property owned and occupied		
8. Cost of additions to, or alterations, extensions, improvements of, any of the assets of the business		
9. Interest on the proprietor's or partner's capital, including interest on reserve or other funds		
10. Losses sustained in former years		
11. Losses recoverable under an insurance or contract of indemnity		
12. Depreciation of any of the assets of the business		
13. Private or personal expenses and expenses not incurred solely for the purpose of earning the profits		
TOTAL		
<i>Deduct</i> —Any profits included in the account already charged to Indian income-tax and the interest on securities of the Government of India or of local Governments declared to be income-tax free.		
Balance		

(Signature of the person making the return.)

(Date) _____ 19

Where you do not keep your accounts in such a form, you must file a statement showing how you arrive at the taxable profits, *i.e.*, showing details of the gross receipts and of the expenditure you propose to set against those receipts. No deductions are permissible on account of—

- (i) Property owned and occupied by the owner of a business for the purposes of a business ;
- (ii) Additions to, or alterations, extensions, or improvements of, any of the assets of the business ;
- (iii) Interest on the capital of the proprietors or partners of the business ;
- (iv) Bad debts not actually written off in the accounts ;
- (v) Losses sustained in previous years ;
- (vi) Reserves of any kind ;
- (vii) Sums paid on account of the income-tax or super-tax or any tax levied by a local authority other than local rates or municipal taxes in respect of the portion of the premises used for the purposes of the business ;
- (viii) Any expenditure of the nature of charity or a present ;
- (ix) Any expenditure of the nature of capital ;
- (x) Any loss recoverable under an insurance or a contract of indemnity ;
- (xi) Depreciation of any kind other than that specified in the Act ;
- (xii) Drawings or salaries of the proprietors or the partners ;
- (xiii) Private or personal expenses of the assessee ;
- (xiv) Any expenditure of any kind which is not incurred solely for the purpose of earning the profits.

If you have included any such sums in your expenditure in your books, you must exclude them from the expenditure permissible for the purpose of arriving at your taxable profits.

Note 6.—The income, profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred *solely* for the purpose of such profession or vocation, provided that no allowance is made on account of any of your personal expenses. Profession fees received by you in any part of India (whether within British India or not) must be included by you in your receipts.

Note 7.—Income-tax chargeable on the profits of companies is paid by the companies, so that the dividends which share-holders receive represent the net amount remaining after income-tax has been paid. The amount of income-tax paid upon these dividends, even if the dividends are stated to be income-tax free, should be added to the amount of the dividends actually received, and the gross amount arrived at should be entered in column 2 of the statement.

If the rate of tax applicable to your total income is less than the rate at which tax has been paid upon your dividends, you may, by attaching the company's certificate received with the dividends, have the excess collected on your dividends from the company set against the tax payable by you on your other income instead of having to apply separately for a refund.

Note 8.—Agricultural income from land not paying land revenue or local rates to an authority in British India should be included under this head.

Note 9.—Deductions from total income can only be made for insurance premia in respect of insurance on your own life or on the life of your wife, or in respect of a contract for a deferred annuity on your own life or on the life of your wife. No deduction is permissible in the case of any other form of insurance except in the case of Hindu undivided families where deductions are permissible on account of premia paid in respect of insurance on the life of any male member of the family or of his wife. The original receipt or the certificate of the insurance company to which the premium was paid must be attached to the return.

SCHEDULE A.

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THE INDIAN INCOME-TAX ACT

[S. 22

Name of village or town where the property is situated.	Name of Street and number of property.	In the case of municipalities the name of the person in whose name the property stands in the municipal registers.	Where the property is occupied by owner or is let.	Annual letting value of the property.	Period during which the property remained vacant.
2	3	4	5	6	6A

SCHEDULE A—*contd.*

S. 22]

STATEMENT OF TOTAL INCOME

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DEDUCTIONS.								Net amount to be carried over to the front of the form.
One-sixth of the annual letting value shown in column 6.	Premium paid to insure the property against damage or destruction.	Interest paid on a mortgage or charge on the property.	Ground rent paid for the property.	Land revenue paid for the property.	Collection charges paid.	Amount claimed on account of property remaining vacant.	Total of columns 8 to 13A.	
8	9	10	11	12	13	13A	14	15

PREScribed FORM.

Rules 18 and 19 have prescribed forms of return which must be used for filing returns. These forms are available at the Income-tax office and can be had by mere asking.

RETURN UNDER-SECTION 22(2) WHETHER OBLIGATORY.

Unless notice is served by the Income-tax authorities there is no obligation on the part of the assessee to file a return of his total income. Where the Income-tax Officer has reasons to believe that an assessee has got an income over Rs. 1,000, the Income-tax Officer shall issue a notice. Whether a notice is to be served on any person or not entirely depends on the discretion of the Income-tax Officer.

CAN AN OFFICER ISSUE A NOTICE ON A PERSON RESIDING OUTSIDE HIS TERRITORIAL LIMIT.

In Muffusil areas generally two officers are posted for carrying out the administration of the district. Under section 5 these officers derive their powers over areas as sanctioned by the Commissioner of Income-tax. Both the officers reside in the same district, having equal powers of assessments but with different territorial jurisdiction or class of persons. In such cases an officer having jurisdiction over an area as sanctioned by the Commissioner, cannot have any jurisdiction over another area not sanctioned by the Commissioner and any notice issued by the officer on such an area is clearly *ultra vires*. Consent does not give any jurisdiction. Application for time does not constitute a waiver, for no action of an assessee give the I. T. O. jurisdiction which the law does not give him—*In re. Ramkrishna Ramanath* A. I. R. 1932 N. 65.

FORM OF NOTICE.

There is no prescribed form of notice. All that a notice is required is to inform the assessee the time by which he will have to submit the return. The assessee must be given at least 30 days' time from receipt of the notice. He can have more time but not less than 30 days. In the case of *Kajarimal Kailyan Das*, 122 I. C. 741 : A.I.R. 1930 All. 209, it was laid down that the Income-tax Officer must allow the assessee at least 30 days' time within which to file a return. If this minimum is denied the notice becomes an illegality and even subsequent extension of time will not cure the defect that initially lay in the notice issued. *Non Audit* return under section 22(1) shall have to be filed, no matter whether audit has been completed or not. Failure to comply will result in an assessment under section. 23(4)—*In re. Manibhum Transport Company Ltd.* 6 I.T.C. 204.

RETURN MUST BE VERIFIED.

The return must be verified either by the assessee himself or by his lawfully authorised representative. It is not obligatory that the assessee himself must sign the return ; it may be signed by the assessee himself, by the principal officer, by the head of the Hindu undivided family or by any of the partners.

BLANK RETURN OR UNFILLED UP RETURN.

Blank return is no return according to law and where the return is not accompanied by details as prescribed in the notes portion, assessment under section 23(4) is justified. This view has been expressed in the case of *Ratan Chand Dimichand*, A. I. R. 1928 L. 944 and also at page 729. Similarly where a return ignores the provisions of rule 19 it is not a return at all as has been decided in the case of *Chetyar Firm*, A. I. R. 1928 Rang. 108 (this distinguishes the case reported in A. I. R. 1927 Mad. 49). Statutory rule 19 which embodies the form of return to be filed by the assessee has the same force as a section in the Act and a return which completely ignores its provisions cannot be considered as any return: *In the matter of A.R.N. Chetyar*, 110 I. C. 29. [*Vide* assessment notes under section 23(4)].

But where owing to ignorance or of anything else, an assessee files a blank return with a profit and loss statement, the Income-tax Officer must not hold the assessee liable to a summary assessment. *In the case of Gangasagar*, A. I. R. 1929 Cal. 219, the Calcutta High Court held that where a letter with a statement of income attached with an incomplete return was sent to the Income-tax Officer with a request to fill up the return, the said return is to be considered a valid one. This lends colour to the view that in case of incomplete return, the assessee may be asked to rectify it. In *Mohanlal v. Hardeo Das*, 5 I. T. C. 128, where an assessee submitted a return on guess, it was held to be a case of "No return". The regulation by note (5) requires in the case of mercantile business a return in a particular form setting forth a number of headings of receipt and expenditure. A return which ignores the conditions set out in the rules portion, is no return at all and an assessment u/s 23(4) is valid.

In the matter of *Bir Bhan*, A. I. R. 1933 L 291, it has been held that when a notice u/s 22(2) read with section 34 is served on a partner, who sends the return "Blank" with remarks that being a sleeping partner, he is not in possession of accounts, an assessment u/s 23(4) is justified.

ACCOUNTING PERIOD.

The prescribed form under rule 19 enjoins on the persons filing the return, to show the accounting year therein. Omi-

ssion to fill that up may result in an assessment under section 23 (4). But it is submitted that mere omission to complete the accounting period is not such an illegality as to bring the case within the purview of section 23, clause (4), more so when the profit and loss account filed along with the return shows the accounting period. Possibly the authorities want to educate the illiterate assessee, which under the circumstances, can best be done by sending for the assessee to complete the return without resorting to a summary procedure.

NOTICE WHEN TO BE ISSUED, BEFORE OR AFTER THE FINANCE ACT.

As a matter of fact no notice can be issued under this section before the Finance Act is passed. The reasons obviously is this that the Finance Act determines the rate to be applied to the year of assessment. Further it is not possible to ascertain the liability of any income to assessment unless the Finance Act announces the minimum limit of taxation. While the Income Tax Act lays down the general procedure for determining the taxable income up to realisation, the Finance Act determines the rate. Thus it seems that notice under the section before the passing of the Finance Act must not be issued. But a notice under section 34 can be issued whether the Finance Act has been passed or not.

CONSEQUENCES OF FAILURE TO FURNISH A RETURN OF INCOME.

Where returns are not furnished by due date, the assessee is liable to prosecution under section 51(3). The result is that the case by reason of non-compliance, is decided *ex parte* according to the best of the Income-tax Officer's judgment under section 23(4). The Income-tax officer cannot ignore the default, if there is really any. Thus where an assessment is made under section 23(4) no appeal lies against that order. The only remedy at his disposal is by way of objection under section 27 which also must be filed within 30 days from the date of receipt of the notice of demand under section 29; the case cannot be decided on its merits. It is just like an application under order 9 rule 13 of the Civil Procedure Code with the difference that hardship is a ground for restoring a case to file in the Civil Court, but it is not so under the Income-tax Act while hearing an objection under section 27. Section 27 lays down that a case can be reopened only then and then alone where the assessee can prove that he was prevented by a sufficient cause or had no reasonable opportunity or did not receive any notice. (Details under note of section 27). But where a case is reopened the Income-Tax Officer shall cancel the assessment and refund any tax credited in the treasury whether or

application has been made or not. Against the order of refusal, the assessee, of course, may prefer an appeal under section 30 to the Assistant Commissioner of Income-tax. Where the Assistant Commissioner restores the case to its file, the assessee must file the return by due date to be intimated to him and if he again fails to comply, the assessment will be again under section 23(4).

It is desirable that with due regard to the fiscal interest of the Government, all Income tax Officials should administer the Act in a sympathetic spirit, and in particular should give assistance to assessee if they find any difficulty in filing up their return.

REVISED OR AMENDED RETURN.

Sub-section (3) of section 22 is a new provision the effect of which is that where a person has not furnished the return in due time or having furnished a return discovers any omission or wrong statement therein, he may furnish a return or a revised return before the order of assessment is passed so that where such a return or revised return has been made the assessee may not be prosecuted for failing to submit a return in due time under section 51(c) and may not be penalised under section 28 for making a wrong statement in the original return. But in the matter of *Gangasagar*, 120 I. C. 435: 1930 A.L.J. 26, it has been held that where a revised return has been filed, the offence committed in the return originally filed need not be condoned. Where a return is made before assessment, it is a return made in due time under section 22(3) and before such return can be disregarded, the assessee is entitled to a reasonable opportunity. Non-compliance of previous notice under section 22(4) does not amount to a default under section 23 (4)—*In re : Sudaram Puram Chand*, A.I.R., 1931 Cal. 729 (Special Bench). It is quite clear that although an assessee may be late in filing his return, nevertheless, if he does file it before the assessment is made, the return has to be considered and dealt with, although out of time—*In re : Protap Chand Ganguly* A. I. R., 1932 Cal. 410. Section 22(3) applies to bonafide mistakes. When assessee deliberately submits incorrect return, I. T. O. can impose penalty u/s 28, although the later return may for the purposes of assessability to Income-tax be treated as a revised return u/s 22(3). The I. T. O. is entitled to look at the previous incorrect return and can impose penalty u/s 28—*In re : A. R. M. A. L. A. Arunachalam Chettiar*, 138 I. C. 291. A return which by section 22 is to be deemed to be a return made in due time cannot be treated as still born because of a previous failure to comply with a notice u/s 22(4).

VERIFIED STATEMENT IN A RETURN.

In the matter of *Bishnupria Chaudhurani*, 50 Cal. 907 : 79 I.C. 305, the Calcutta High Court held that where an assessee in a verified return declared that he had no income from a particular source, if the authorities disbelieve the statement, the burden of proof rests with the income-tax department. Thus it is clear that "any assessment based on the inability of the assessee to prove his negative statement and on general assumption only is bad in law and must be cancelled." [Details under section 23(4)].

From the above case it appears that it is not necessary to file an affidavit denying the existence of any source of income. The verified statement in the return is sufficient for the purpose. The assessee may further file a petition duly verified; an affidavit is not essential. But in the case of *Radhakrishna Ram Narayan*, 171 I.C. 217, it was held that an assessee can set off losses against his income in any year but he cannot claim that right unless he proves the losses. Here the burden of proof is evidently on the assessee.

VOLUNTARY FILING OF RETURN.

Under section 22, clause (2) it is not obligatory on an assessee to file a return on his own accord. But there is no bar for an assessee to file a return voluntarily and where a return is filed out of his own accord in the prescribed form, the return is valid and must be treated as such. Subsequent objection when assessed, cannot be raised on the ground that he was not called upon to file a return. The case of *Gulichand Tulsidas*, 118 I.C. 535: A.I.R. 1929 L. 246, is an illustration on the point.

CONSEQUENCES OF FALSE RETURN.

Where a false return has been filed, the assessee is liable to criminal prosecution under section 177 or under section 182 of the Penal Code and in case of any false statement "verified in the prescribed form" the assessee is liable under section 52 of the Income-tax Act to a criminal prosecution. In such a case, apart from these legal penalties, an assessee is liable to penalty under section 28 of the Act. But where the penalty under section 28 has been imposed, no criminal prosecution should be launched against the assessee—the penalty is alternative and further a criminal prosecution should not be started without the express approval of the Assistant Commissioner.

PRODUCTION OF ACCOUNTS.

Under sub-section (4) of section 22 the Income-tax Officer is empowered to call upon any person liable to make a return

to produce such accsunts or documents as he may require. It does not, however, empower him to ask the assesseees to prepare accounts like a profit and loss account which they do not already possess and do not require for their own purposes: all that it empowers the Income-tax Officer to do is to call for accounts and documents which are, or are believed to be, in existence. The production of accounts may be called for whether a return has or has not been made. As stated in paragraph 67, it is always desirable in the interests both of the assesseees and of the Government that Income-tax Officers should obtain a return of income before they make an assessment. If, however, such return is not forthcoming, they should so far as possible, obtain the accounts of the assessee. Again, if a return is made the Income-tax Officer has power to call for accounts wherever he considers it necessary for the purpose of testing the accuracy of the return. It is, however, desirable that the least possible inconvenience should be given to assesseees by the detention of their accounts by Income tax Officers, and Income-tax Commissioners should take steps to see that accounts are not detained for any undue time or for any unnecessary purpose. Steps should be taken to secure that the services of competent and reliable accountants where employed by assesseees should be utilised to the fullest extent by the Income-tax Officers. The latter from their experience should soon know what particular auditors can be relied upon to give accurate figures. Where a statement of profit and loss filed by an assessee has been certified as correct and complete by such an accountant, the Income-tax Officer should, unless he sees reason to the contrary, accept the statement as correct and complete with regard to the facts mentioned in it, although he will frequently have to call for details showing how various figures are made up. But in such cases the accountant himself when authorised by the assessee to appear on his behalf should be asked to supply the details. Income-tax Commissioners should take steps to secure that the services of such accountants are fully availed of.

The proviso to sub-section (4) of section 22 prevents any Income-tax Officer from calling upon an assessee to produce books of account going back for a period of more than three years prior to the "accounting period." This limitation applies merely to books of account; it does not apply to documents. No limitation is placed by the Act upon the power of the Income-tax Officer to call for documents of any date.

Neglect to furnish accounts or documents asked for by the Income-tax Officer under section 22(4) is punishable under section 51(d) and further, under the provisions of section 23(4) read with section 30(1), any person who fails to comply with

the requisition of the Income-tax Officer for the production of accounts or documents may not appeal under section 30 against the assessment made whether he has made a return or not. He is in exactly the same position as a person who did not make a return in the first instance, his only remedy being that described in paragraph 67, *i.e.*, under section 27. (Para 69 of the I. T. M.).

NOTICE UNDER SECTION 22(4) WHEN TO BE ISSUED.

Law as it stands, notice under section 22(4) can be issued whether notice under section 22(2) has been served or not. Thus it is issuable before or after the notice under section 22(1) or under section 22(2) has been served. The decision in the case of *Brijlal Ranglal*, 106 I. C 193 is no longer a good law in view of the decision arrived at in the case of *Ramkhele-yan Ugamall*, A. I. R. 1928 Pat. 529 overruling the decision in the case of *Brijlal Ranglal*. The Calcutta High Court in the case of *Hurmuk Roy Dulichand*, 32 C. W. N. 710, also adopted the view that notice under section 22, clause (4) can be issued whether return has been issued or not. (*Vide* details under section 33). Notice to produce account book after submission of return is valid—*Raghu Nath Das Sheolall v. Com. I. T. Bengal*, A.I.R. 1932 Cal. 411. It is open to issue notice under section 22(4) at any stage—*In the matter of Pollumal*, A.I.R., 1933 All. 541. (Relying on the decision of *Md. Hyat Haji Md. Sardars*, A.I.R., 1930 All. 49.

ACCOUNTS—DOCUMENTS.

The Income-tax Officer has a limited jurisdiction so far as his power to call for accounts is concerned. Accounts in fact mean books of account and documents denote deeds, hatchitas, contract papers and vouchers even. Under section 22(4) the Income-tax Officer exercises a limited jurisdiction inasmuch as he calls for accounts of three years prior to the assessment year. But so far as documents are concerned his powers are unlimited.

There may be cases when the Income-tax Officer while scrutinising accounts wants to enquire into any statement made by the assessee, he can call for accounts prior to 3 years and non-compliance of the requisition under section 22 clause (4) means presumption against the assessee under section 114 of the Indian Evidence Act. In the case of *Sankara Linga and others*, 126 I. C. 273 : A. I. R. 1930 Mad. 209, it was held that where an assessee claims certain deductions and it becomes unnecessary for the Income-tax Officer to scrutinise accounts of several years prior to 3 years, the Income-tax Officer can call for those accounts and if the assessee fails to comply, the

result will be an assessment under section 23(4). Non-production of those accounts may be considered as withholding of the accounts deliberately and the assessee cannot complain if the Income-tax Officer draws a presumption against the assessee for such non-production and makes a summary assessment under section 23(4).

BRANCH ACCOUNTS.

The Income-tax Officer of the principal place of business has power to call for accounts of an assessee for his branch business where the branch business is outside his territorial limits. If the assessee fail to comply, he may be assessed under section 23(4). The Income-tax Officer may accept the report of the officer within whose jurisdiction the branches are situate; but there is no bar on the part of the Income-tax Officer of the principal place of business to call for the accounts of branch business over again. In *In the matter of Lachman Prasad Baburam*, A. I. R. 1930 All. 49 : 126 I. C. 809, it was held that the Income-tax Officer of the principal place of business has power to call for accounts of branch business, whether those accounts have been produced before the Branch Officer or not. The Income-tax Officer of the principal place of business is not bound to accept the report of the Income-tax Officer within whose area the branch is situate. But the Income-tax Officer should not compel the assessee to produce his branch accounts if already produced there, inasmuch as, it will add hardship, in bringing those books to the head quarters from distant places. In *In the matter of Lachmoudas Baburam*, 88 I.C. 216 : A.I.R. 1925 All. 385, the following reference was made to the High Court, "*Do the provisions of sub-section (4) of section 64 of the Indian Income-tax Act oust the jurisdiction of the Income-tax Officer of the area in which a principal place of business is situated so far as the assessment of the profits or gains of a branch business is situated in another area and proceedings relating thereto are concerned?*" It was held by the Allahabad High Court by Justices Walsh and Mukerjee : "In our opinion the jurisdiction of the Income-tax Officer of the area in which the principal place of business is situated is not ousted. The jurisdiction is concurrent under section 64, sub-section (1), and the Income-tax Officer of the principal place of business has duty of assessing the whole of the income derived from the principal place of business as well as the various branches. By sub-section (4) every Income-tax Officer has also jurisdiction to exercise the power of an Income-tax Officer with regard to the profits arising in that area. It is of course understood, and ought to be understood, by the authorities that the Income-tax Officer of the principal place of business will not exercise his powers oppressively, so that persons will-

ing to submit the requirements of the Income-tax Officer of the particular area in which the branch is situated, should not be deprived of an opportunity of supplying him with all proper material, but exceptional cases may require exceptional remedies. *The question may very well be put whether the Income-tax Officer is bound to issue separate notices under section 22(2) for the branch business.* Custom, as it stands, is not at all necessary to issue separate notices under section 22(2) for each branch. What the authorities usually do, is by way of issuing a notice under section 22(4) calling for the branch account; on the other hand the officer having jurisdiction over the branch area issues a notice under section 22(4) calling for the branch account for report to officer of the principal place of business. But can an assessment be made under section 23(4) for non-production of branch business accounts where the assessee has complied with all the terms of the notice issued under section 22(4) by the officer of the principal place of business and has also complied with the requisition made by the branch officer. The Income-tax Officer of the principal place of business did not call for the branch account nor did he receive any report of the branch income. It is submitted that under the circumstances assessment must not be made in hot haste and where there is sufficient time the Income-tax Officer must wait for the branch report or issue a fresh notice under section 22(4) calling for the branch account for his examination. The I.T.O. at the head office can call for branch account whether produced or not at the branch area and non-compliance of this may result in a summary assessment"—*Lochmondas Baburam* 4 I.T.C. 61, *L.R.M.S.T. firm* 3 I.T.C. 416. The I.T.O. has power to make a test judgment assessment, even when the income from the branch business is not shown in the return—*Mohanlal Hardeo Das*, 9 pat. 172. An I.T.O. has jurisdiction to call for branch accounts outside British India (*Somosundaram chettiyar*, 7 R. 595, *Radhakrishnam & sons* 2 I. T. C. 345, and *Lalita Prasad Chiranjilal* 6 I. T. C. 182). The I.T.O. has jurisdiction to call for a return of the income of all branches. Sec. 64(4) does not militate against the view. It has been enacted only to safeguard the powers of the local officers, in case it might be contended that sub-section (1) of section 64 takes away that power *In re : Abhogram Chinnilall* 8 I.T.C. 343 : 145 I.C. 562.

NOTICE UNDER SECTION 22(4) ON NON-RESIDENT, ETC.

An Income-tax Officer can serve a notice under section 22(2) on a non-resident or to his agent under section 42 if he is liable to assessment. The Income-tax authorities have power to call for accounts under section 22(4) and service of notice on the agent carrying on the business for the principal is good service. In the case of *Shomosularam*, 123 I. C. 136:

A.I.R. 1930 Rang. 10, it was held that an Income-tax Officer is competent to call on the agent of a non-resident principal to produce books of accounts relating to the principal's business outside British India and an assessment under section 23(4) is not bad in law, if no compliance is made. Similar views have been expressed in the case of *Mahamad Kasim Rowther* 126 I.C. 595 : A.I.R. 1930 Mad 763. Scope of sub-section (4) is very wide and gives the Income-tax Officer very wide powers. Where profits were received at Rawalpindi from business in Kashmir it was held that the Income-tax Officer at Rawalpindi is competent to ask the assessee to produce account books relating to Kashmir business as has been decided in the case of *Radhakisan*, 101 I.C. 321 : A.I.R. 1927 L. 5.

POWER TO SEIZE BOOKS.

The Income-tax Officer can call for the books of accounts, and can ask for production by giving opportunities after opportunities but certainly this insistence does not authorise the officer to seize the books. Where the assessee refuses to comply, the Income-tax Officer can assess him under section 23(4). He can visit the shop, can ask for the accounts but he will be guilty of trespass if he insists on staying at the shop, in spite of orders to the contrary as has been reported in the case of *Acchuram*, 95 I. C. 308 : 7 L. 104. The Calcutta High Court has also in the case of *Lal Mohon Poddar*, 55 Cal. 423 : 31 C. W. N. 996 adopted the above finding and has expressed the view that the power to seize books by the Income-tax authorities is not contemplated by the provisions of the Income-tax Act. He can issue notice under section 37, thus far, and no further.

RE-OPENING OF DECISIONS.

Decision about assessment arrived at by predecessors can be reopened by the succeeding Income-tax Officer provided fresh facts are forthcoming. The Income-tax Officer, however, is to be guided by the principle of natural justice and assessment cannot be arbitrarily changed, *Deokinandan & Sons*, A. I. R. 1930, L. 605. In the case of *Sankralinga*, A. I. R. 1930 Mad. 209, it was held that when in a previous year of assessment a decision is arrived at after investigation and inquiry, that certain amounts standing in the name of certain ladies in the partitioner's account were stridhanam belonging to them and as such the interest paid in respect of the said amounts, is held to be a valid deduction, it is still open to the Income-tax authorities to reopen the question of the ownership of the amounts in a subsequent year of assessment and the authorities not constituting a court, are not bound by the principle of *res judicata*. (Doctrine of *res judicata* under section 23.)

COMBINED NOTICE UNDER SECTION 23(2) & 22(4).

It may suffice to say that notice under sections 22(4) and 23(2) may be comprised in one document without committing an illegality: *In the matter of Harmuk Roy Dulichand*, 114 I. C. 90: 56 Cal. 39: 32 C. W. N. 710; for details *vide* section 23 under head "combined notice under sections 23(2) and 22(4)".

POWER OF ADJOURNMENT

The power of an officer entrusted with an enquiry to adjourn the proceedings, as occasion requires is so necessary, convenient and universally conceded that unless it is expressly withheld by statute or ruling having the force of law, it must be taken as having vested in him. An Income-tax Officer, therefore, has the power of adjournment in an enquiry under section 23(3): *In the matter of M. S. M. Perianma Pillai*, 122 I. C. 449: A. I. R. 1930 Mad. 109.

CAN A NOTICE UNDER SECTION 22(4) BE ISSUED WHEN EN-
QUIRY UNDER SECTION 23(3) IS IN PROGRESS.

The case of *Khasiran Karamchand*, 108 I. C. 524 held that when compliance has been made, the assessee should not be further subjected for any subsequent default to the drastic penalty of summary assessment. (For details *vide* under section 23.)

Can a notice be issued to persons residing outside the territorial limit of an I. T. O. ?

The question whether notices can be issued to persons residing outside the territorial limit of an I. T. O. by post—rather whether a notice by post to a non-resident foreigner, if served, is valid.

We can look upon the English cases for precedents (*vide Whitley v. C. I. R.* 10 T. C. 88.)

Section 63 of the Act provides the machinery by which notice under any of the sections can be served on the person therein named either by post or as if it were a summons issued by a court under the code of Civil Procedure.

Order 5, rule 25 of the C. P. Code runs thus :

"When the defendant resides out of British India, has no agent in British India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the court is situate".

Thus there is no bar to send by post notice to a non-resident foreigner having no agent in the locality. The jurisdiction of

section 22 (2) asking an assessee to file his return is not confined to persons resident in British India alone, for the charging sections 3 and 4, do not draw any distinction between residents and aliens. In *Bhanjee*, 41 M. L. J. 991, it has been held that a non-resident can be assessed in respect of income accruing or arising in British India.

CONCURRENT JURISDICTION.

It is open to the I. T. O. at the principal place of business to call for the accounts of the branches irrespective of whether they have been produced before the local I.T.O. or not and whether the assessee has submitted returns of incomes to them. Further the I. T. O. at the principal place of business is not bound to accept the report if any, made by the branch Income-tax Officers and he need not refer back to them the points which he is not prepared to accept. The same income cannot, of course, be taxed twice, once by the I. T. O. of the branch and again by the I. T. O. of the principal place of business. If the I. T. O. of the branch area instead of merely making a report to the I. T. O. of the principal place of business, makes a final assessment himself in respect of the income within his area, it would seem to be still open to the I. T. O. of the principal place of business, to assess the branch income on a footing different from that assessed by the I. T. O. of the branch—*L. R. M. S. T. Firm* 3 I. T. C. 416.

The obligation to make a return at the principal place of business is not discharged by filing returns before the I. T. Os of the branch area and it is therefore open to the I. T. O. of the head office to assess u/s 23(4) in the absence of a return without waiting for reports from the branch I. T. Os. (This is in connection with cases where the return filed before the I. T. O. of the head office does not contain the income of the branch business.)

23. (1) If the Income-tax Officer is satisfied that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return.

Assessment.

(2) If the Income-tax Officer has reason to believe that a return made under section 22 is incorrect or incomplete he shall serve on the person who made the return a notice requiring him, on a date to be therein specified, either to attend at the Income-tax

Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

(3) On the day specified in the notice issued under sub-section (2) or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require, on specified points, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.

(4) If the principal officer of any company or any other person fails to make a return under sub-section (1) or sub-section (2) of section 22, as the case may be, or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment and, in the case of a registered firm may cancel its registration :

Provided that the registration of a firm shall not be cancelled until fourteen days have elapsed from the issue of a notice by the Income-tax Officer to the firm intimating his intention to cancel its registration.

ASSESSMENT UNDER SECTION 23(1).

Whenever a return is filed, the Income-tax Officer is to see whether it is correct and complete for the purposes of assessment and where he is convinced that the return with the profit and loss statement, can be accepted without any reference to the books of accounts, the Income-tax Officer shall assess him on the basis of the return filed and the formalities of issuing notices under section 23 (2) and 22 (4) are not essential. This is an assessment on the basis of the return submitted. In *Asoku mills v. commr. of Income-tax, Bombay* 8 I. T. C. 340, the assessee preferred an appeal against an assessment under section 23 (1) on the ground that notice u/s 23 (2) is a condition precedent of an assessment u/s 23. It has been held, that an assessment u/s 23 (1) is valid, when the I. T. O. is satisfied that the return is correct

and complete and notices under sections 23 (2) and 22 (4) are not at all necessary. Section 23 (1) gives ample power to the I. T. O. to make an assessment on the basis of the return submitted.

APPLICABILITY OF SECTION 23 (2)

A return which deliberately fails to comply with the rule contained in section 22 (2), that the return is to be of the total income of the assessee, is no return at all within the meaning of that rule of law. Section 23 (4) permits an I. T. O. to make a best judgment assessment in the case there is failure to comply with a return u/s 22 (2). The language does not stop with the words "fails to make a return," but the word "return" is qualified by the words under sub-section (2) of section 22. There is no contradiction or inconsistency between the provisions of sections 23 (2) and 23 (4).

Where the assessee makes a return of his total income to the best of his ability and the then information, still there may be room for some omission due to some cause or other, in that and in such cases, section 23 (2) would apply—*In re : Abhoy Ram Chumilal A. I. R. 1933, All. 197.*

EVIDENCE IN ASSESSMENT PROCEEDINGS OTHER THAN RETURNS AND ACCOUNTS OF ASSESSEE.

In addition to his general power to call for accounts, the Income-tax Officer where he believes a return made under section 22 (2) incorrect or incomplete has power to call upon an assessee to attend or to produce or cause to be produced evidence of the correctness of his return. If an assessee fails when required by an order under section 23 (2) to attend or to produce evidence in support of his return, he is not liable to any penalty under section 51, but failure to comply with such orders has the result of placing the assessee in exactly the same position as a person who originally made a return [see section 23 (4)], that is, he may not appeal against the order of assessment or take any action other than action under section 27 as described in paragraph 67. If the assessee is a registered firm, the I. T. O. may cancel its registration.

Under section 23 (3), the Income-tax Officer is empowered to utilise the evidence bearing on the assessment which he may obtain of his own motion, while under sections 37 and 38, he can enforce the attendance of any person for this purpose and compel the production of the information that he requires.

The following special instructions should be observed in calling for information from railway administrations :—

- (i) The information must be relevant to an individual assessment. Income-tax Officers should not, for

instance, ask for a complete statement of all consignments to or from a particular station.

(ii) The demand for information must be couched in definite terms. For instance, it must state whether particulars are required with regard to outgoing or incoming consignments and name the stations with regard to which the information should be collected.

(iii) The requisition for information should always be sent to the Agent of the Railway administration concerned. There is no objection, however, to Railway officers furnishing information direct to the income-tax authorities without the intervention of the Agent where the Agent has no objection to their doing so. Section 37 gives power to call for railway books.

Except as provided in section 19-A and Rules 42 and 43 a company should not be required to furnish the Income-tax Officer with a return of the persons (with their addresses) for the time being appearing on the share register of the company and the amounts of the dividends paid or payable to such persons during any particular period. Such a duty would be burdensome to the company with no corresponding advantage to the administration. It is for this reason that in section 39 of the Act provision is made that the share register, the register of debenture-holders and of mortgagees of any company are open to the inspection of the income-tax authorities, who may also take copies or cause copies to be taken of any entries in such registers. Since the power to inspect, and take copies of such register is specifically conferred by section 39, no income-tax authorities utilising these special powers can be called upon to pay any fee for inspection or copies under the Companies Act.

I. T. O. HAS POWER TO CALL FOR INTEREST LEDGER OF ANY COMPANY.

The Bill as originally framed contained a provision empowering an Income-tax Officer to require information to be given regarding specific payments shown in the accounts of an assessee where there is reason to believe that such payments will become liable to tax in the hands of the recipients. This particular provision was omitted by the Select Committee on the Bill as being entirely unnecessary because Income-tax Officers have ample powers to disallow any payment shown in the accounts of an assessee where proof of the payment is not forthcoming.

Section 37 also provides for the issue of commissions. The scale of diet money and travelling expenses for witnesses summoned under this section should be that prescribed for attendance in Civil Courts in the Province concerned. (Para 70 of the I. T. M.)

PERSONAL ATTENDANCE OF ASSESSEE.

While section 23 (2) empowers the Income-tax Officer to require a person making a return to attend at his office, under the provisions of section 61 any person required or entitled to attend before any income-tax authority may either attend in person or be represented by a person duly authorised by him in writing. The penalty to which an assessee who failed to attend when required to do so by an Income-tax Officer was liable under the Act of 1918, has been omitted from section 51 of the present Act. While there is no obligation on an assessee to attend in person at any stage of the assessment proceedings or before any income-tax authority in connection with any proceedings or under the Act, and while he may be represented at any such proceedings by any person he pleases to authorise in writing, failure to attend or to be represented has the result that the assessee loses any right of appeal against the assessment.

VERIFICATION OF RETURN BY ASSESSEE OR BY AGENT: EVIDENCE ACT.

It should, however, be particularly noted that the provisions of section 61 merely refer to attendance. Returns and verifications required under the Act must be signed either by the assessee himself or by any duly authorised person.

It is desirable that tax-payers should be allowed to use whatever agency they please for the purpose of representing their case; and whatever person they authorise to represent them whether he be an employee, an accountant or any other person, who has presumably been selected by them as the person having the best knowledge of their accounts and financial position, such person is entitled to appear before any income-tax authority and to give explanations and produce evidence regarding any point of doubt that may arise. (Para 71 of the I. T. M.)

Principle of an assessment u/s 23 (3)—

An assessment u/s 23(3) is possible under various circumstances; but the observations, made in the case of *Binjraj Hukumchand* 35 C.W.N. 589, should be utilised.

“When, as in this case an assessee produces his books for the year of account and complies with any other requirements

as to specific documents so that he is assessed in the ordinary way u/s 23(3) and not as being in default, the Income-tax authorities can not assess him upon any figure of profits, not warranted by evidence they have before them".

NOTES.

Personal attendance of the assessee is not necessary and a notice under section 23(2) cannot ask for attendance of the assessee. Where it is so called it will amount to an irregularity but not an illegality so as to nullify the whole proceeding. Returns and verifications can be made by a person other than the assessee, provided he has been duly authorised. The Income-tax Officer cannot refuse to accept a return duly verified by an authorised Agent.

The Income-tax Act has no applicability with the Indian Evidence Act. "Income-tax officer is not a court. He has not the procedure of a court and he is to some extent a party or judge in his own case." It has been said under section 37 of the Income-tax Act that the proceeding before the Income-tax Officer shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code. "If an Income-tax Officer in making an investigation was a court, there is no necessity for the provision of section 37. It is only for the purposes stated in that section that he is to be deemed a court."

In Lal Mohan Poddar v. Emperor 55 Cal. 423, it was held that a proceeding before an Income-tax Officer on the production of account books pursuant to a notice under section 23(2), Income-tax Act, is a "judicial proceeding only for the purposes of sections 193 and 228 but not of section 196 of the Penal Code and that conviction under section 196 for the production of false account is bad in law. The learned Judges, Justices C. C. Ghosh and Cammiade observed, "As we read section 37, it seems to us to be clear that the Legislature has for the purpose of punishing offences under section 193 and 228 of the Penal Code (and under no others) converted proceedings before the officers mentioned therein, which are not judicial proceeding ordinarily into judicial proceedings."

In the matter Hurmuk Roy Dulichand, 56 Cal. 39, the question arose whether an Income-tax Officer is a court. Chief Justice Rankin observes that "it has been said that the Income-tax Officer must proceed in a judicial manner and section 37 has been mentioned in this connection. Fundamentally, no doubt, the Income-tax Officer must proceed in a judicial spirit and come to a judicial conclusion upon properly ascertained fact though I would point out that the Income-tax Officer is

not a court, he has not the procedure of a court, and he is to some extent a party or judge in his own case."

Similar views have been expressed in the case of *Sankra-linga Nadar*, A. I. R. 1930 Mad. 209, that an Income-tax Officer while proceeding to make an assessment after inquiry, as contemplated by the Income-tax Act, is not a court.

Thus it is clear that except under section 37 and to a limited extent thereto, proceedings before an Income-tax Officer are not "judicial proceedings." Under section 37 an Income-tax Officer is a court so far as enforcement of attendance of any persons and examination on oath is concerned. He can compel production of document and even issue commissions for the examination of witnesses. Thus even under section 37 where the proceeding is deemed a judicial proceeding the power of an Income-tax Officer is clearly limited. Neither the Evidence Act nor the Civil procedure Code has any applicability in income-tax proceedings. An Income-tax Officer is not bound by all the formalities of the Civil Procedure Code and of the Evidence Act, while proceeding to make an assessment. The proceedings are quasi-judicial in nature and nothing more. What the Act wants is judicial spirit and nothing more.

JUDICIAL MANNER.

Income-tax proceedings being quasi-judicial in nature, the Income-tax Officer must proceed in a judicial manner and he must come to a judicial conclusion, while making an adjudication. But it must be remembered that a judicial conclusion is only possible where all materials are forthcoming. Where accounts are withheld, an assessee certainly cannot complain that the Income-tax Officer has not exercised his judicial discretion properly. It has been held by the Calcutta High Court, in the case of *Harmuk Roy Dulichand*, 32 C. W. N. 713, that the assessment should be made in a judicial manner which presupposes that the assessee must produce all the evidence that the law requires him to produce so that a judicial determination may be possible. A person who deliberately withholds books of accounts cannot complain if the taxing officer assesses him to the best of his judgment.....It is idle and absurd for a person who has books of account and deliberately withholds them to complain of not being treated in a judicial manner which proceeds upon evidence and the basis of the statute is to see that available evidence is produced. It is then and then only that the assessment is to be made upon a judicial consideration of the evidence, otherwise it is to be made 'to the best of his judgment' and 'brevimanu'. But it must be noted that a purely arbitrary assessment by an Income-tax Officer on mere hearsay evidence is not at all justified and the High Court is competent to interfere.

BURDEN OF PROOF.

Where an assessee in a verified return declares that he has no income from a particular source the burden of proof being on the party who would fail, if no evidence were produced, that is, on the officers of the Income-tax department, rests entirely with the department. An assessee cannot be expected to prove a negative statement and "if an assessee states that he has no income from a certain source and the officer of the department disbelieves him it is for him to prove that he has some such income and not for him to prove the reverse. Any assessment based on the inability of the assessee to prove his negative statement and on general assumptions only is bad and should be cancelled": *In the matter of Bishnupria Chandhurani*, 50 Cal. 907 : A. I. R. 1924 Cal. 337. But in the case of *Vikari Vyankatish Dravid and Co.* (1927) Nag. 283, a different view has been advocated.

Thus where a verified return denies the existence of any source, the Income-tax Officer is bound to prove that he has income from that particular source. This can be done in the verified return under section 22(2) or in a petition duly presented, denying existence of income from any source. It is not essential to file an affidavit to that effect.

SERVICE OF NOTICE UNDER SECTIONS 23(2) AND 22(4), THAT IS, WHETHER NOTICE UNDER SECTION 22(4) CAN BE SERVED AFTER SUBMISSION OF THE RETURN.

Under the law as it stands Income-tax authorities are justified in issuing combined notices under sections 23(2) and 22(4). The Patna High Court's decision in the case of *Brijlal Rangalal*, 106 I.C. 193 is no longer a good law (106 I. C. 193). There it was decided that a notice under section 22(4) can only be issued before the filing of the return and thereafter under section 23(3) and section 37. The Calcutta High Court in the case of *Ram Kishan Das Bagri*, 2 I.T.C. 324 and also in the case of *Harmuk Roy Dulichand*, 32 C. W. N. 713, decided that a combined notice is valid and legal and that the power of the Income-tax Officer is not limited to the issue of a notice under section 22(4) when return has already been filed. The Patna High Court subsequently in the case of *Ramkhelawan Ugamlal*, A. I. R. 1928 (Pat.) 529 F.B; 114 I.C. 211 overruled its previous decision in the case of *Brijlal Rangalal*, 106 I. C. 193. Similar views have been held in the case of *Chandra Sen Janai* 108 I.C. 234; 50 All. 598. The cases of *Chetyar Firm*, 117 I. C. 564 and also the case of *Shiva Swami Chettiar*, 124 I. C. 206 followed the above principles.

An exhaustive discussion on this point with reference to all the existing High Court rulings was made in the case of *Mahamad Hayat Haji Mahamad Sardar*, 131 I. C. 81, which is

reproduced below ".....Mr. Oconnor for the assessee urges that the notice was served upon his client in the course of enquiry which was being conducted by the I. T. O. under section 23(3) of the Act, that a notice under section 22(4) would be issued only before the submission of the return by the assessee. The learned Counsel places his reliance upon the phrase 'having made a return' which is used in sub-section (4) of section 23, in connection with the 3rd default and argued that the legislature by expressly stating that the 3rd default can take place only after the submission of the return impliedly intended to say that the other two defaults must occur, not after the making of the return but before that stage..... There is some force in this argument which, it is to be observed, was accepted by a Division Bench of the Patna High Court in *Brijlal Rangalal*, 106 I. C. 193. But that judgment has been overruled by a Full Bench of that Court in *Ramkhehwan Ugam-lal*, 114 I. C. 211.

"At any rate, one thing is absolutely clear that the notice contemplated by section 23(2), can issue only after the return has been made and the phrase 'having made a return' merely emphasises that fact. It is no doubt an obvious fact and the use of the phrase in question does not add anything to what was already well known. The word 'having made a return' appeared to be superfluous in so far as the sub-section, as at present worded, is concerned.

"Be that as it may I cannot accede to a contention which would confine the exercise of the power to call for account and documents to the stage prior to the submission of the return when it can be of little or no use, and shuts it out at a stage when it is most needed. It is clear that the account or other document kept by the assessee are, in the majority of cases, best evidence for determining his income, and it is difficult to believe that the legislature intended to render that power practically nugatory by limiting its operation to a stage it can hardly serve any useful purpose.

MARGINAL NOTES.

"The learned Counsel for the assessee also refers to the marginal notes against sections 22 and 23 and argues that the use of the phrase 'return of income' as brief description of the provision contained in section 22, when distinguished from the word 'assessment' used in respect of section 23, indicates that the former section prescribing the procedure for obtaining a return from the assessee was intended to apply only to the stage prior to commencement of the inquiry into the assessment of income to be made under the latter section. No serious argument can, however, be built upon the marginal

notes which even if they are treated as forming part of the Act, cannot control its operation.

“The wording of sub-section (4) of section 22, is, however, clear and unequivocal and does not suggest any limitation as to the time when the notice requiring the production of accounts and documents should be served. The difficulty has, to a large extent, been created by the fact that the law enacted by that sub-section which by reason of its being an independent provision, should have been embodied in a separate section, has been made a part of a section which primarily deals with the return of income and apparently embraces the preliminary stage of proceeding.

“.....Coming now to the judicial decision on the subject, I find that the weight of authority is decidedly in favour of the view that the language of the sub-section, uncontrolled as it is, by any other provision in the statute, must be given its full scope; and that the Income-tax Officer can issue the notice contemplated by it not only before, but also after, the submission of the return and even after the commencement of the inquiry under section 23(3); *In the matter of Chandra Sen Janai*, 108 I. C. 234, *Harmuk Roy Dulichand*, 56 Cal. 39 : 32 C. W. N. 710, *Ramkheewan Ugamlal*, 114 I. C. 211 and *Ramswami Chetyar*, 116 I. C. 566. The contention urged on behalf of the assessee was accepted by a Divisional Bench of this court in *Kushiram Karamchand*, 108 I. C. 524 which was followed by Justice Mukherjee in an exhaustive judgement in, *In the matter of Lochman Prosad Baburam of Cawnpore* 126 I. C. 801. There are no doubt plausible arguments in support of that contention, but after bestowing my careful consideration upon the matter I don't think that they would justify a limitation upon the scope of the sub-section when its language is wide enough to apply to all the stages of the proceeding before the Income-tax Officer.

“As observed by Lord Esher in *Queen v. Judge of the City of London Court*, if the words of an act are clear, you must follow them, even though they may lead to manifest absurdity. The court has nothing to do with the question whether the legislature has committed an absurdity. When once the meaning is plain, it is not the province of a court to scan its wisdom, or its policy. Its duty is not to make the law reasonable, but to expound it as it stands, according to the real sense of the word.

“My answer to the first question is that the Income-tax Officer can, even after the commencement of an inquiry under section 23(3) issue a notice under section 22(4) calling upon the assessee to produce his account books for the previous and

for 3 years prior to it and on the assessee's failure to comply with the notice, assess income under section 23(4)."

DISSENTIENT NOTE.

But Justice Dalip Singh observes : "on the whole therefore if the matter were *res integra* I would be of opinion that section 22(4) cannot be used after a notice has been issued under section 23(2), and that the answer, therefore, to the first question referred should be in the negative. I am, however, greatly constrained by the weight of authority on the point which is now all the other way, in my opinion, the legislature should intervene and place the question beyond reasonable doubt :"
In the Matter of Mahammad Hayat Haji, Mahamad Sardar, 131 I. C. 81. It is open to the Income-Tax Office to issue notice u/s section 22(4) at any stage—*In re Pallumal Bholanath* A. I. R. 1930 All. 49. The Calcutta High Court in the case of *Raghunath Das Seurlal v. Commissioner of Income-Tax, Bengal*, A. I. R. 1932 Cal. 411 has held that notice to produce account books after submission of return is valid and proper.

With due respect to the learned Judges' findings and the observations made by them, it is submitted that when a return is called and if the assessee fails to file the same by the due date, a notice under section 22(4) is essential to ascertain the taxable income of the assessee. When the taxable income is thus determined, the assessee will be asked to file a return showing the taxable income as worked out and if he agrees to that, the assessment will be under section 23(1). But where a return has been filed by the due date, notice under section 23(2) is clearly mandatory provided the return is considered incomplete or incorrect. In that case although the weight of authority is that a notice under section 22(4) is not only permissible but clearly legal, it is submitted that the income-tax authorities are to take recourse to a downward course while proceeding to make an assessment under section 23. Had it been so the legislature would have enacted a different section and not through a sub-section as it now stands. Possibly there cannot be any difficulty to call for accounts under section 37. The words "incomplete or incorrect" will be meaningless unless the officer can have access to the accounts. For how can he declare a return "incomplete and incorrect" unless he has gone through the accounts.

RESULT OF NON-COMPLIANCE OF EITHER OF THE NOTICES UNDER SECTIONS 23(2) AND 22(4).

(Practice.)

It is customary and legal as well to comprise two notices in one document and thus an Income-tax Officer is competent

to issue a combined notice under section 23(2) and 22(4). Whenever an assessee appears before the I. T. O. with a profit and loss statement showing the process as to how the taxable income has been worked out, the assessee is deemed to have complied with the notice under section 23(2). Under section 22(4) the Income-tax Officer usually calls for documents and accounts. Where the assessee complies with the notice under section 23(2) but fails to comply with the terms of the notice under section 22(4), assessment must be made under section 23(4) as reported in the case of *Harmuk Roy Dulichand*, 32 C. W. N. 710. Similar views have been adopted in the case of *Sibaswami Chettyar*, 124 I. C. 206.

COMBINED NOTICE UNDER SECTIONS 23(2) AND 22(4)

On assessees having branch business outside the jurisdiction of the Income-tax Officer of the principal place of business and on an Agent of non-resident principal.

Where an assessee carries on business at several places, the Income-tax Officer of the principal place of business shall make the assessment on the entire profits of the business, irrespective of the area where it is situate. The Income-tax Officer is competent to call for accounts of the branch business, outside his territorial limit.

SEPARATE NOTICE ON EACH BRANCH, IF ESSENTIAL.

It is not necessary to issue separate notices on each branch business. The assessee cannot escape an assessment under section 23(4) if he fail to produce branch accounts, if requisitioned. But it is not essential for the Income-tax Officer to call for the branch accounts. Those accounts may be called by the Income-tax Officer within whose area the business stands and he may send the report of his examination to the Income-tax Officer of the principal place of business. The Income-tax officer has undoubtedly power to call for the accounts of branch business but the assessee should not ordinarily be compelled to bring their accounts at the headquarters from distant places, provided the branch accounts have been produced before the officer of the area and provided the assessee himself has no objection to the report of the said officer : *In the matter of Lochman Prasad Baburam*, 82 I. C. 216 and also A. I. R. 1930 All. 49.

AGENT.

An Income-tax Officer has power under section 22(4) to call on the Agent of a non-resident principal to produce books of accounts relating to the principal business outside British India with a view to enable him to assess the principal in British India. An assessment under section 23(4) is not bad in law if

the notice is disregarded : *In the matter of Shomosundaram*, 123 I. C. 136 : A. I. R. 1930, Rang. 10.

DOCTRINE OF RES JUDICATA.

In assessment proceedings, questions may arise whether any previous decision works as an estoppel or operates as *res judicata*. It is submitted that the principle of *res judicata* is not applicable to Income-tax proceedings whereas in Civil Procedure Code the question of *res judicata* plays an important part. Income-tax Officers are not court. The proceeding initiated by them are not strictly regulated by judicial principles, and "he has sometimes to depend upon materials which would be wholly inadmissible in a court of law." Thus it is clear that the same Income-tax Officer or successor in office is competent to re-open a previous decision where fresh fact and tangible evidence are forthcoming as has been reported in the case of *Sankarlinga and others*, 126 I. C. 273 : A. I. R. 1930 Mad. 209. Similar decisions have been arrived at in the case of *Diokinandan and Sons*, A. I. R. 1930 L. 605. In the case of *Sankarlinga and others* it was held : "The argument for the petitioner is that where an authority is constituted by a statute for determining judicially the legal rights and obligations of parties whether *inter se* or between themselves and the Crown and where that authority has to determine not only whether an obligation exists but also the measure of that obligation : that authority is a court and the decisions of that authority are final and conclusive subject to such remedies by way of appeal or otherwise as are conferred by law. For this broad proposition there is no authority. So far as the Income-tax Act is concerned, there is nothing in the Act which states that an Income-tax Officer proceeding to assess the income of an assessee and to determine the amount of such assessment is a court. On the contrary the provision of section 57 suggests that except for certain purposes the Income-tax Officer is not a court..... We are of opinion that an Income-tax Officer proceeding to assess an assessee after making an enquiry as contemplated by the Income tax Act is not a court and that it cannot be said that the doctrine of *res judicata* applicable to the decision of Civil Court applies." The order of an I.T.O. in a particular year allowing the salaries of two of the partners as business deductions does not bind his successor in a subsequent year—*In re : Dental Stores*, A.I.R. 1931 Lah. 341. But the I.T.O. has no jurisdiction to revise an assessment of previous year, which is complete and final. In *in the matter of U. Lunyo*, 146 I.C. 300, it has been held that an I.T.O. has no jurisdiction to revise an assessment where he disagrees with his predecessor's findings as to the amount of assessable income.

INCORRECT OR INCOMPLETE RETURN—INVALID RETURN.

Whenever a return is filed by an assessee, it may be accepted or not and it is only in case of non acceptance the question of issuing notice under section 23(2) arises. But difficulties may arise when a return filed by the assessee is treated as invalid and inoperative. Usually a return is said to be invalid when it does not conform to the rules as are required in the statutory form. Thus where a return totally ignores its provisions, it cannot be considered as any return at all. Take for instance, an assessee files a return but fails to show the accounting year in the verification column as prescribed, the return is incomplete and invalid. Similarly where a return shows in the column the words "blank or nil" without showing the actual loss figure, the said return is invalid. In those cases the Income Tax authorities are not bound to issue a notice under section 23(2) and the assessment can be made by issuing a notice under section 22(4). Even in these cases where the assessee complies with the requisition under section 22(4), still the assessment must be under section 23(4) for the technical defect. As assessment under section 23(4) is a penal one, it is submitted that Income-tax authorities as a rule must ask the assessee filing invalid returns, to rectify those returns. It is not the intention of the legislature to take undue advantage over the illiteracy of the assessee or to exploit them for technical defects. An important question evolves out of an assessment under section 23(4) for technical defect in the return. *When an assessee complies with the notice under section 22(4) but he is assessed under section 23(4) to a fancy figure not supported by the books of accounts can that assessment stand?* It is submitted that such a course is wholly unjustified. The assessment may be made under section 23(4) for the technical defect in the return but there is no reason why the book profits should not be accepted. When compliance has been made under section 22(4), the Income-tax Officer is bound to scrutinise the accounts and to determine the taxable income. The legislature does not intend that even in these cases the Income-tax Officer shall make an assessment to any figure he likes. Where all reliable informations and data are forthcoming, the Income-tax Officer is not warranted by law to make an assessment ignoring the book profit altogether. Such a procedure is not only arbitrary but unwarranted as well. There may be omission, technical in nature, due to ignorance and inadvertance. This is why the Income-tax Officer should call for the assessee for proper rectification or even he can, while issuing a notice under section 22(4) call for the account and on that date may ask the assessee to rectify the return.

VALIDITY OF RETURN.

It has been held that where an assessee files a blank return

accompanied by a covering letter in which it is stated that the assessee carries on no business in the place and receives no income at that place, the said return is no return and an assessment under section 23(4) is justified : *In the matter of Ratan Chand Duni Chand*, 111 I. C. 149 : A.I.R. 1928 L. 944 and also A.I.R. 1928 L. 729. Similar views have been adopted in the case of *Naval Kishore Khariatal v. Commissioner of Income-tax* reported in A.I.R. 1930 L.1014.

It has already been stated that an assessee while filling a return in the case of loss or profits, must put the actual loss figure or actual profit figure according to his computation. Hence a return with estimated losses, or profits cannot be treated as a valid return and assessee cannot complain for summary assessment neither he can claim as of right any notice under section 23(2).

ASSESSMENT U/S 23(4) AND ITS EFFECT ON DEPRECIATION.

In *in the matter of Govt. Mail Motor Service* 136 I.C. 707, it has been held that where an assessment is made u/s 23(4), all expenses incidental to business must have been assumed to have been considered in arriving at the net income assessed and the fact that no depreciation accounts has been maintained, as required by the rules, does not give rise to any inference that no allowance for deductions have been made.

With due respect, I beg to differ and the assessee has every right to claim the previous depreciation allowance next year.

LETTER WITH A STATEMENT OF INCOME.

It has been held in the case of *Gangasagar*, 120 I. C. 435 : A.I.R. 1929 All. 919, that where an assessee sends a letter to the Income-tax Officer that he has made a mistake in the return and files and encloses a letter together with a prescribed form suggesting therein that the Income-tax Officer may enter the figure contained in the letter and may substitute the fresh return in place of the old one, the said letter and the enclosure with the blank form constitute a regular return. Where return under section 22(2) has been served but no return is forthcoming but instead the assessee writes a letter intimating his non-liability to be taxed under the Act, this conduct amounts to failure to make return under section 22(2) and an assessment under section 23(4) is good in law : *In re : Ananda* A.I.R. 1931 Pat. 1306.

VOLUNTARY RETURN.

When a person, without being called upon under section 22(2) to furnish a return of his income for the previous year, voluntarily files a return of such income in the prescribed

form and duly verified in the prescribed manner, the question arises whether the return voluntarily filed is a valid return or not. It was held that it is an important question of law and reference to High Court is essential : *In re : Gulichand Tulsidas*, 118 I.C. 535 : A.I.R. 1929 L. 246.

ASSESSMENT UNDER SEC. 23(3) READ WITH SEC. 13 (ASSESSMENT ON A PERCENTAGE BASIS).

It is under section 23(3) that the question of estimated assessment crops up. Where an assessee has fully complied with all the terms of the notice under section 23(2) and 22(4) and where there is apparently no default, the Income-tax Officer cannot fall back on a summary assessment, but he can certainly take recourse to an estimated assessment, provided the books of accounts of the assessee are in such a state that profits therefrom cannot be easily deducted. This procedure is justified where the accounts are in a chaotic condition, totally unadjusted and unbalanced and profits cannot be deducted. Where the assessee produces the day book and the *khatian* which are completely unbalanced, so much so that neither sale nor purchase figures can be ascertained, an estimated assessment is justified. In such cases the I.T.O. is justified to take up any reasonable sale figure as the basis of his estimate. But where accounts are complete but not properly balanced in the sense that profits and loss accounts have not been maintained in the account, it is desirable that estimated assessment should not be made. In the case of *Raghunath Mahadeo*, 89 I. C. 675, it was held that accounts cannot be rejected on the ground that these are not balanced and incapable of yielding reliable informations. But where accounts for the year under assessment cannot be separated, the Income-tax Officer is legally justified in assessing profits at a flat rate without informing the assessee of the evidence on which the rate is based. But it is desirable that Income-tax authorities should maintain a Register of rates so that there may not be any difficulty for the authority to adopt a rate prevalent in the locality in the year under review.

But where no profit and loss accounts are maintained and the accounts do not show either weight or details of stocks, estimated assessment is warranted by law. But this procedure must not be adopted where the accounts are adjusted and balanced. Where an estimated assessment is permissible it must be seen that assessment is made on a flat rate on the actual sale figures alone. Where sale figures are forthcoming, the Income-tax Officer is not competent to take an estimated sale figure first and then to make an assessment on flat rate. While making an estimated assessment, closing stocks should be left out of account altogether. The Income-tax Officer must have an eye that a reasonable gross profits are worked out with

due reference to other cases of the locality and he must also allow the assessee all admissible expenditures incurred for the purpose of business. It has been held in the case of *Siva Prosad Gupta*, A.I.R. 1929 All. 819 that an assessee is entitled to deduct from his estimated income actual losses suffered in particular years and amount of irrecoverable debt which should have been discovered in a particular year. Further the assessee is competent to show and claim deductions that income assessed in subsequent years was included in previous assessment: *In re: Chetyar Firm*, 122 I. C. 902 : A.I.R. 1930 Rang. 4. It has been held in the case of *Maharaja of Darbhanga*, A.I.R. 1930 Pat. 81, that it is the duty of an assessee to keep and present his accounts to show the actual profit made by him. If he fails to do this he must put up with the estimate of the officer, made with the best of ability, although it is true that the officer is not entitled to make a guess without evidence (A.I.R. 1929 Pat. 476 relied on).

In the case of *Lachman Prasad Baburam*, A. I. R. 1930 All. 49 it was held by Justice Mukherjee that "it is the ordinary privilege of subject that he shall not be taxed on his income without proper investigation. It is open to the assessee to prove what his income is before he is assessed on the income. If it had been the intention of the legislature that the mere word of the taxing officer should be final, one should find clear indication of that in the language of the statute".

Where an assessment is made under section 23(3) read with section 34, the Income-tax Officer has absolutely no jurisdiction to dispense with a notice under section 23 (2). The I. T. O. cannot plead that as it is an assessment on flat rate, formality of a notice under section 23(2) is not necessary; simply because it is an assessment actually made on the basis of accounts produced, but for some defect, assessment is made on a flat rate—*Rampratap Sukdoyal v. Commr. of I. Tax, Delhi*, A. I. R. 1930 L. 277.

ASSESSMENT WHEN ACCOUNTS ARE NOT KEPT.

Whenever a return is filed, the assessee is usually asked to produce his books of accounts but there may be cases where the assessee does not keep any account at all. Thus where such an assessee who does not maintain any book, is called upon to produce books of accounts, no default attaches to the assessee and the assessee must not be dealt in a summary way. Certainly he cannot be made liable for that which he does not keep or does not require at all.

Whether an assessee has got accounts or not, is purely a question of fact and the Income-tax Officer is the sole arbiter to come to a decision. This view has been expressed in the case of *Khusiram Karamchand*, 100 I. C. 774.

ASSESSMENT UNDER WRONG HEADS.

An assessee cannot be assessed under section 23(4) where he does not keep any account and the assessee is within his rights to prefer an appeal before the Assistant Commissioner. An assessee does not lose his right of appeal if the Income-tax Officer assesses him under a wrong sub-section. A right of appeal is a matter of substance and not a matter of procedure—*Colonial Sugar Refining Co. v. Irving*, (1905) A. C. 369. Income-tax authorities are not infallible and there may be cases where assessments are made under section 23 (4) which practically fall under section 23(3). Neither an Income-tax Officer is justified to make an assessment under section 23(3) when it really falls under section 23(4). The mere fact that an assessment purports to have been made under section 23(4) does not shut out an appeal if it can be shown before the appellate authority that there was no default : *In the matter of Duni Chand*, A. I. R. 1929 L. 593 : 117 I. C. 69. When an appeal is presented before the appellate authority, he must examine whether the assessment has been made under the proper sub-section. The appellate authority without examining the accounts produced, cannot reject the appeal when it is made directly against an order under section 23(4). Whenever the authority of the I. T. O is challenged on the ground of an assessment under a wrong section (u/s 23 (4)) and a direct appeal is preferred, the Asst. Commr. has no power to turn it down. He is bound to hear the assessee and then decide the points raised—*In re : Bhagabati Prosad*, 138 I. C. 682. I am clearly of opinion that the mere fact that the Income-tax Officer has quoted section 23(4) in his assessment order is not enough to preclude an appeal. To shut out an appeal, there must be a genuine case under section 23(4). He cannot ask the assessee to file a petition under section 27 and then to prefer an appeal when it is refused. Where the Income-tax Officer fails to arrive at a proper adjudication and makes an assessment under a wrong sub-section, the assessee is not bound to file an objection under section 27, but he can prefer an appeal direct. The Assistant Commissioner must not reject the appeal without hearing the appellant for it is the inherent right of an assessee to prefer an appeal where there is no default. The Income-tax Officer is not competent to make an assessment under section 23(4) when it is clearly a case coming within the purview of section 23(3). The authorities are not infallible and his decision may or may not be correct. A mistake on the part of the authority, cannot deprive an assessee of his right of appeal. Similarly where an assessment has been made under section 23(3) when it is a clear case under section 23(4) and if the assessee prefers an appeal, the Assistant Commissioner can reject it on the ground that it has been decided under a wrong

head. Should such a circumstance arise, the assessee can file an objection under section 27, within 30 days from the date of the order passed by the Assistant Commissioner. Such a petition under section 27 should not be thrown out simply because it has been filed more than 30 days after the service of the notice of demand. Assessments made on the basis of accounts but under section 23(4) for non-compliance are not justified, provided non-production of such books of accounts does not affect the I. T. O. Failure to produce accounts, not required for any relevant purposes does not amount to a non-compliance and an assessment under section 23(4) is untenable. The term "require" in section 22(4) means require for any relevant purpose—*In re : Rai Bahadur Ganga Sagar*, 132 I. C. 331.

SUMMARY ASSESSMENT UNDER SEC. 23(4).

An assessment under section 23(4) can only be resorted to where an assessee (1) fails to comply with the requisition under sections 22(1) or 22(2); (2) fails to comply with all the terms of a notice under section 22(4) and fails to comply with the requisition under section 23(2). Where Income-tax Officer can presume existence of accounts etc. although stoutly denied by the assessee, an assessment under section 23(4) is justified—*In re : Jangi Bhagat Ramaratan*, I.L.R. VIII P. 877; *Lachman Prasad Baburam*, 41 T. C. 61. Non-compliance of a requisition under section 22(4) may result in an assessment under section 23(4), when existence of accounts were admitted in a previous year—*In re : Mohonlal Hardeodas*, 4 I.T.C. 90 and *In re : Kedar-nath Kesriwal*, 34 C. W. N. 1093.

Where accounts or documents or evidence produced by an assessee furnish sufficient materials for an assessment, it should not be made under section 23(4), but when they do not furnish sufficient materials for an assessment and in particular, and if they instead of revealing the income intentionally falsify the income, it is open to the I. T. O. to make a summary assessment under sec. 23(4)—*Muzafar Ali Khan v. Commr. of I. Tax*, 137 I. C. 752; 4 I.T.C. 4. Failure to file return under section 22(2) makes one liable under sec. 23(4)—*In re : Lalit K Mitra*, 140 I. C. 702.

Failure to comply with all or any of the terms of notices issued under sections 22, 23, makes an assessee liable u/s 23(4). When an assessee deliberately withholds reliable accounts but makes a partial compliance, he can be assessed u-s 23 (4)—*In re Deokarandas*, I. L. R. L. 691; *In re : Maharaja of Darbhanga*, 4 I. T. C. 283. Similarly failure to comply with notice u/s 22(2) or any of the terms of notice, results in summary assessments u/s 23(4)—*In re : Nawal Kishore Khariatilal* A. I. R. 1930

Lahore 1014. (*Vide Sarjoo Pershad Gauri Sankar*, 132 I. C. 564).

But assessment u/s 23(4) is not permissive, where identity of persons is not proved. It must be noted that the mere fact that identity of persons to deposits and withdrawals, is not proved, is not sufficient to reject accounts in toto. Similarly, when interest is paid to persons whose identity is not proved, interest paid may be disallowed, but the assessment should be u/s 23 (3)—*In re S. P. K. A. A. M. Chettiar Firm*, A. I. R. 1932 R. 52.

Where accounts are called for and produced, but the I. T. O. suspects the accounts as to deposit entries and the explanation of the assessee is not convincing, the I. T. O. can presume existence of other transactions recorded in separate undisclosed accounts, the I. T. O. can make an assessment u/s 23(4)—*S. P. K. A. A. M. Chettiar Firm v. Commr. of I. Tax, Burma*, 6 I. T. C. 49.

It is to be noted that substantial compliance of the terms of the notice is essential. When books of accounts are not forthcoming the Income-tax Officer "shall make an assessment to the best of his judgment" and in the case of registered firms, the Income-tax Officer is competent to cancel its registration after giving the assessee clear 14 days' notice.

CONSEQUENCE OF AN ASSESSMENT UNDER SECTION 23(4).

An assessment under section 23(4) is a penal one, pure and simple. It gives wide power to an Income-tax Officer when there is actually any default. Thus, where an assessment is made under section 23(4), the assessee is deprived of his right of appeal; he can only file an objection under section 27 to the Income-tax Officer for cancellation of assessment within 30 days from receipt of the notice of demand. The Income-tax Officer is not bound to go through merits of the case; he is to ascertain whether the assessee was prevented by a sufficient cause or not. Of course the assessee is competent to present an application under section 33 to the Commissioner for review.

ASSESSMENT UNDER SEC. 23(4) FOR TECHNICAL DEFECT.

By technical defect is meant any defect in the return, *e.g.*, omission to state the accounting year or to sign the verification, etc. Where there is such technical defect in the return but where there has been full compliance under section 23(4), the assessment shall be apparently under section 23(4). But as all available data and figures are forthcoming, the mere fact that an assessee is a defaulter does not take away the Income-tax Officer's responsibility to make a proper enquiry, for a proper assessment. Although the Income-tax

Officer is not a court and the proceedings before him are rather quasi-judicial proceedings, still he must adopt a judicial procedure. As a matter of equity, justice and good conscience the Income-tax Officers must not make an assessment under section 23(4) on flimsy pretexts but must proceed in his procedure by judicial consideration. An Income-tax Officer can assess under section 23(4) for technical defect but he must not proceed arbitrarily when all available details for the purpose of assessment are forthcoming ; *In the matter of Mohon Lal Hardeo Das*, 122 I. C. 810. An assessment u/s 23(4) for technical defect does not mean an enhanced assessment.

ASSESSMENT UNDER SECTION 23(4) CAN BE A NEGATIVE FIGURE.

The idea that where an assessment is made under section 23(4) the demand figure must be greater than its previous year's demand or that the assessment under section 23(4) cannot be lowered or be made a negative figure, is highly erroneous. The Act nowhere says directly or indirectly that a summary assessment means high assessment. All that the Act says is that the assessment must be made "to the best of his judgment". Of course in case of default, technical or vital, the Income-tax Officer shall make the assessment under section 23(4) and even can presume under section 114 of the Indian Evidence Act. This habitual default may be due to the fact of his being highly assessed and there is no bar to make the assessment to the best of his judgment on the basis of his enquiry. Where he is satisfied that the default is not deliberate and the assessee has got no assessable income, the Income-tax Officer should proceed to assess him at nil even under section 23(4). Where the Income-tax Officer is convinced on enquiry that a particular assessee has got an income of Rs. 5000, he must assess him on the income of Rs. 5000 and not more under section 23(4), no matter if he was assessed on Rs. 10,000 in the previous year.

EXAMINER OF ACCOUNTS.

The Income-tax Act does not recognise the Examiner or Inspector of accounts. An assessee can certainly refuse to produce his accounts before such officer and such refusal is not equivalent to non-compliance. Unless the Act is amended, the Examiner of accounts cannot be regarded as an authority, and failure to comply with his requisition does not bring an assessee under the ambit of section 23(4). The assessee can very well say that he is not bound to produce his accounts before the examiner. They are retained for administrative convenience and expediency and considering that bulk of the works are generally done by them, they must be invested with some power.

ASSESSMENT TO THE BEST OF JUDGMENT.

When section 23(4) of the Act says that the "Income-tax Officer shall make the assessment to the best of his judgment" it means that he must proceed while making an assessment in a judicial spirit and must be guided by judicial consideration. He must exercise the power vested in him by strict judicial principles. Heavy assessment under section 23(4) does not mean that the Income-tax Officer has exceeded the discretion vested in him. The assessment must not be purely arbitrary, it must be legal and regular. It was held in the case of *P. K. N. P. R. Chettyar firm* 124 I. C. 267 : A. I. R. 1930 Rag. 33 and also in the case of *S. P. K. A. N. Chettyar firm* A. I. R. 1930 R. 35, that where an assessment under section 23(4) is entirely arbitrary and does not purport to be founded on any material or reasons beyond the Income-tax Officer's private opinion, the assessment is clearly unwarranted by law. It has been held by the Rangoon High Court : "He must make it according to rules of reasons and justice, not according to private opinion ; according to law and not humour and that the assessment is not to be arbitrary, vague and fanciful, but legal and regular" : In re : *S. P. K. A. M. Chettyar firm* A. I. R. 1930 R. 33. It must be remembered that the Income-tax department should not as a rule take a stand on technical ground under section 23(4) when there is a substantial compliance with the requisition of notice under section 22(4) : In the matter of *Mohan Lal Hardio Das*, 122 I. C. 810. In such cases if the Income-tax Officer make an arbitrary assessment, brushing aside all available data, it does not constitute an assessment to the best of his judgment. In the case of *Sibaprotap Bhattacharya*, A. I. R. 1924 Mad. 880 it was held : "..... But I must say that having regard to the facts of the case it would be just and equitable that this matter should, if possible, be reconsidered by the proper authorities and that the assessee, who was assessed only on an income of Rs. 2800 in the previous year, which would make him liable only for Rs. 72, ought not, owing to his failure to produce his account within time which he has explained, be assessed to income-tax of Rs. 15000 and odd next year, specially when he is prepared to offer his account books for inspection and pay all the expenses of inspection. It cannot be said that trade revived so much in the year under question as to raise any fair presumption. So far as Madras is concerned, the compliant has been that the trade has been very dull and I had numerous applications for extending time for payment. Very probably the state of things in the mufasil has not been better. This is a matter, I think, where there has been injustice to the petitioner which I am sorry I cannot remedy by proceeding under section 45 of the Specific Relief Act".

This view of the Madras High Court, however generous and pious it may be, failed to give any relief to the assessee. But in view of the rulings of the Rangoon High Court, such an assessment as this, is clearly unwarranted by law, for the reason that an assessment to the best of judgment "is not to be arbitrary, vague and fanciful, but legal and regular."

In the case of *Mahamad Hayat Haji Mahamad Sardar*, 131 I. C. 181 the following reference was made under section 66 by the Commissioner of Income-tax, Lahore :—"In making an assessment to the best of judgment under section 23(4), does the Income-tax Officer possess absolutely arbitrary authority to assess at any figures he likes or is he to be guided by any judicial principle or rules of equity, justice and good conscience?" It was held : "with respect to this question the statute lays down that, when the assessee has made a default mentioned in sub-section (4) of section 22, the Income-tax Officer shall make the assessment 'to the best of his judgement'. In the majority of cases contemplated by that sub-section there would be little or no evidence before the Income-tax Officer to guide him in determining the income. He has, therefore, no alternative but to make an assessment upon the information received by him. The proceedings taken by him are not regulated by strict judicial principles and he has sometimes to depend upon materials which would be wholly inadmissible in a court of law. At the same time he cannot act in a purely arbitrary manner. Suppose a person whose income had not in the past exceeded Rs. 5000 in any year, makes a default as contemplated by the sub-section, the Income-tax Officer would perpetuate an injustice if he would take advantage of the default and assess the income for the accounting period at a million rupees without any justification. It cannot be seriously claimed that he has made that assessment 'to the best of his judgement'.It has, however, been held in the case of *P. K. N. P. R. Chetyar firm* that when the statute says that the Income-tax Officer shall make the assessment 'to the best of his judgement' it means that he must make it according to 'rules of reasons and justice, not according to private opinion, according to law and not humour' and that the assessment is to be not arbitrary, vague and fanciful but legal and regular". The legislature, in allowing the Income-tax Officer to make the assessment to the best of his judgment has no doubt conferred on him a discretion in the matter of assessing income and if the assessee withholds the account books or documents, upon which a reliable estimate of income can be founded, the assessment must *ex-necessitate rei*, to some extent be arbitrary. But in *S. P. K. A. M. firm*, 121 I. C. 390 : A. I. R. 1930 Rang. 35, the court held : "it must nevertheless be reasonable and should not proceed purely on the Income-tax Officer's private opinion

to the exclusion of all materials before him. Such an assessment cannot be said to have been made to the best of his judgment. There may be cases, such as the one with which we are dealing, in which evidence has been adduced, but default has been subsequently committed and there is no reason why the Income-tax Officer should ignore such evidence and make an assessment according to his own whim and fancy.....

.....The High Court is however, entitled to make a pronouncement upon the meaning of section 23(4) and to lay down that the Income-tax Officer cannot be said to make an assessment to the best of his judgment, if he is not guided by the dictates of justice and fair play. An assessment resting upon the whim and caprice of the Income-tax Officer cannot be elevated to the dignity of an assessment made to the best of his judgement". The I. T. O. in making an assessment under section 23(4) has no judicial discretion at all. This overrules *pro tanto* the following cases, *P. K. N. P. R. Chettier Firm*, 124 I. C. 267; *S. P. K. A. A. M. Chettier Firm*, 121 I. C. 790, *A. R. A. N. Chettier Firm* 110 I. C. 29, *P. K. N. P. R. Chettier Firm*, 125 I. C. 344—*In the matter of Abdul Bari Chaudhry*, 133 I. C. 81. But in *M. Abdul Quayum & Co. v. Commissioner of I. T. (U. P.)* A. I. R. 1933 Oudh, 396, the principle underlying the case of *Mahamad Hayat Hazi Mahamad Sardar*, A. I. R. 1933, Lahore 87, is being enunciated.

CANCELLATION OF REGISTRATION UNDER SECTION 23(4).

This has been inserted with a view to put a check to frivolous registration petitions and as a matter of fact to detect bogus registered firm. But where a registration has been allowed by an Income-tax Officer, it must not be cancelled until 14 days have elapsed from the issue of a notice by the Income-tax Officer to that effect. Allowing 14 days must be interpreted that cancellation must not be *ex parte*, the registered firm must be given an opportunity to have his say in the matter. Cancellation of registration without notice is an irregularity and illegality as well.

No form has been prescribed for a notice under section 23(4) for cancelling registration. Refusal to registration is appealable. Similarly an appeal may lie against an order cancelling registration.

NOTICE HOW SERVED.

Notice under section 23(2) must be served by registered post, personal service by the office peon may also serve the purpose. In the case of an unregistered firm a notice can be served on any member of the firm as provided in section 63(2) of the Act. It is not necessary that notice should be served only on the member of the firm who made the return. The

word "persons" includes a firm (90 I. C. 549). Section 63 provides method for service of notice or requisition. This section is permissive and not exhaustive and it is open to the I. T. O. to adopt any method of service that is effective, so long as the assessee is not prejudiced thereby. Thus the signature on the margin of an order sheet of the I. T. O. by the assessee or by his authorised lawyer would be equivalent to proper service—*In Ram Khelwan Ugamlal*, 3 I. T. C. 225.

Where an assessee does not produce his branch account before the Income-tax Officer of the area when called for and does not produce those branch accounts at the head-quarters, as not being specifically called, is the assessment to be made under section 23(4) ?

An assessee is called upon under section 22(4), to produce his branch accounts before the officer within whose jurisdiction the branch business is situate and the assessee fails to comply with the requisition and the Income-tax Officer of the branch area sends his report to the Income-tax Officer of the principal place of business to the effect that in the absence of book, the taxable income of the assessee's branch business may be taken to be Rs. 5000. The Income-tax Officer of the principal place of business on receipt of the report issues a notice under sections 23(2) and 22(4) calling for all the accounts within his territorial limits ; the branch accounts are not called for. The assessee complies with all the terms of the notice. Can the Income-tax Officer proceed to make the assessment under section 23(3) or should he make an assessment under section 23(4). In such a case the Income-tax Officer cannot but make an assessment under section 23(4) in view of the fact that branch accounts were not produced before the officer of the branch area. It is submitted that in such cases it is the duty of an Income-tax Officer of the principal place of business to issue a notice under section 22(4) specifically calling the branch account and where there is a failure to comply with the requisition, the assessment must be made under section 23(4). It is desirable that Income-tax Officer should give an opportunity to the assessee to produce all his accounts before an assessment is made under section 23(4). But a "Return" filed by an assessee implies a return of total income including the branch income and a notice to adduce evidence in support of the return filed and to produce books of accounts necessarily implies that all books of accounts including the branch accounts are required.

ACCOUNTS TO BE SPECIFICALLY CALLED.

From the wording of section 22(4) that "such accounts or documents as the Income-tax Officer may require", it is

quite clear that Income-tax Officer should, as a rule, issue a notice under section 22(4) specifically mentioning the accounts or documents, he requires. The use of the word "such" before accounts or documents goes a great way to lend countenance to the contention that specific mention of accounts and documents is essential. In the case of *Nirmal Kumar Singha*, 29 C. W. N. 591 the Calcutta High Court, by an *obiter*, incidentally observed that specific mention of accounts is desirable. The Lahore High Court in the case of *Bajinath*, 94 I. C. 156 decided that an Income-tax Officer while making an assessment should proceed on his strict judicial principles and should not base his assessment on hearsay evidence. The observation of Mr. Justice Walsh of the Lahore High Court that an Income-tax Officer is a court while proceeding to make an enquiry under section 23(2), cannot be accepted in view of the fact that in that case the Income-tax Officer will have to proceed on judicial evidence and not hearsay and inadmissible or irrelevant evidence (94 I. C. 156). The view of Justice Walsh that an Income-tax Officer is a court while holding an enquiry under section 23(2) cannot be seriously maintained as a result of the observations made in the case of *Muhamad Hyat Haxi Mahamad Sardar*, 131 I. C. 181 that "proceedings taken by him are not regulated by strict judicial principles and he has sometimes to depend upon materials which would be wholly inadmissible in a court of law". In the case of *Sankaralinga and others*, A. I. R. 1930 Mad. 209 it was held by the Madras High Court that "we are of opinion that an Income-tax Officer proceeding to assess an assessee after making an enquiry as contemplated by the Income-tax Act is not a court".

POWER OF ADJOURNMENT.

The Income-tax Officer has inherent power to adjourn any proceeding to any future date according to the circumstances of each case. Under the Civil Procedure Code, the judicial officers have inherent rights under section 151 to adjourn any case and to exercise some other powers not specifically provided in the section itself. So far as Income-tax proceedings are concerned, an officer has the inherent right to adjourn any proceeding. In the absence of any rule expressly or impliedly made, the right of an officer to exercise his discretion of adjournment remains vested in him. In the case of *S. M. Perianun Pillai*, 122 I. C. 449 : A. I. R. 1930 Mad. 113, it was held that "the power of an officer entrusted with an enquiry to adjourn the proceedings, as occasion requires, is so necessary, convenient and universally conceded that unless it is expressly withheld by statute or rule having the force of law, it must be taken to vest in him. An Income-tax Officer has, therefore, the power of an adjournment in an enquiry under

section 23(3)". Order 17, rule 1 of the Civil Procedure Code, provides that the court has power to grant time at any stage of the suit.

ORDERS OF ASSESSMENT.

When an assessment order has been passed under section 23 an assessee who applies to the Income-tax Officer for a copy of the order must be supplied by the Income-tax Officer with a copy free of charge; (Income-tax Manual, para 76, and *vide* in this connection the Chapter under head 'copies') subject to the conditions— :

- (i) That not more than one copy of an assessment order should be supplied free, and
- (ii) that a copy of assessment order of a year previous to that in which it was passed should not be supplied free of charge unless the applicant satisfies the I. T. O. that it is required for his use in some proceedings which are pending under the Indian Income-tax Act, 1922, with reference to the particular assessment covered by the order and which are not time barred.

Proposed representations to higher authority which are not covered by any provision of the Act will not be regarded as proceedings under the Act.

COPY OF BRANCH INCOME.

When branch report is merely referred to in the assessment order by the assessing I. T. O., a copy of it should be granted to an assessee free of charge on application. No separate copy of the report can be granted, when substantial portion of the report is embodied in the assessment order.

COPY OF DEPRECIATION ORDER.

A copy of depreciation order can be granted on assessee's furnishing searching and copying fees.

23A. (1) Where the Income-tax Officer is satisfied that any firm or other association of individuals carrying on any business, other than a Hindu undivided family or a company, is under the control of one member thereof, and that such

Power to assess individual members of certain firms, associations and companies.

firm or association has been formed or is being used for the purpose of evading or reducing the liability to tax of any member thereof, he may, with the previous approval of the Assistant Commissioner, pass an order

that the sum payable as income-tax by the firm or association shall not be determined, and thereupon the share of each member in the profits and gains of the firm or association shall be included in his total income for the purpose of his assessment thereon.

Explanation.—A member of a firm or association who owns the whole or the major portion of the capital of the firm or association shall not by reason only of that fact be deemed to control the firm or association.

(2) Where the Income-tax Officer is satisfied that a company is under the control of not more than five of its members and that its profits and gains are allowed to accumulate beyond its reasonable needs, existing and contingent, having regard to the maintenance and development of its business, without being distributed to the members, or that a reasonable part of its profits and gains, having regard to the said needs, has not been distributed to its members, in such manner as to render the amount distributed liable to be included in their total income, and that such accumulation or failure to distribute is for the purpose of preventing the imposition of tax upon any of the members in respect of their shares in the profits and gains so accumulated or not distributed, the Income-tax Officer may, with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income-tax by the company shall not be determined, and thereupon the proportionate share of each member in the profits and gains of the company, whether such profits and gains have been distributed to the members or not, shall be included in the total income of such member for the purpose of his assessment thereon :

Provided that this sub-section shall not apply to any company which is a subsidiary company or in which the public are substantially interested.

Explanation.—For the purpose of this sub-section,—

(a) a company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the com-

pany is in the hands of a company not being a company to which the provisions of this sub-section apply or of two or more companies none of which is a company to which those provisions apply ;

- (b) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply), and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in British India or are in fact freely transferable by the holders to other members of the public ;
- (c) unless the contrary is proved, a company shall be deemed to be under the control of any persons where the majority of the voting power or shares is in the hands of those persons or of relatives or nominees of those persons ;
- (d) "nominee" means a person who may be required to exercise his voting power on the directions of, or holds shares directly or indirectly on behalf of, another person.

(3) The Assistant Commissioner shall not give his approval to any order proposed to be passed by the Income-tax Officer under this section until he has given the firm, association or company concerned an opportunity of being heard.

(4) (i) Where any member of a firm or association of individuals makes default in the payment of tax on his share of profits and gains which has been included in his total income under the provisions of sub-section

(1), such tax may be recovered from the firm or association, as the case may be.

(ii) Where the proportionate share of any member of a company in the undistributed profits and gains of the company has been included in his total income under the provisions of sub-section (2), the tax payable in respect thereof shall be recoverable from the company and may be recovered from such member, if there are not sufficient funds in the hands of the company to pay the tax, or if the winding up of the company has commenced.

(iii) Where tax is recoverable from a company, firm or other association under this sub-section, a notice of demand shall be served upon it in the prescribed form showing the sum so payable, and such company, firm or association shall be deemed to be the assessee in respect of such sum, for the purposes of Chapter VI.

(5) Where tax has been paid in respect of any undistributed profits and gains of a company under this section, and such profits and gains are subsequently distributed in any year, the proportionate share therein of any member of the company shall be excluded in computing his total income of that year.

OBJECTS AND REASONS.

"As regards sub-section (1), we agree, in the first place, with those criticisms which point out that there may be perfectly genuine firms of which one member only is competent to bind the firms by his act, while on the other hand, we consider that the sub-section as drafted could easily be evaded by an unwritten agreement or understanding under which a deed of partnership giving such powers to all the partners could be rendered a practical nullity and the actual power placed in the hands of one partner only.....The real purpose of the sub-section should be clearly stated and its provisions confined to cases where a firm or association has been formed and is used really and principally in order that one or more of its partners may evade the incidence of the Income-tax. Finally we have added an explanation to make it clear that firms such as are common in India in which one man puts up the whole or the major

portion of the capital and is the principal partner in possibly a dozen or more firms with working partners associated with him, are not necessarily to be deemed to have been formed for the purpose of evasion.

As regards sub-section (2) of the proposed new section 23(A), we are convinced that the criteria contained in clauses (a), (b), and (c) of the sub-section as originally proposed would fail to achieve the desired object. These clauses would in fact have limited the operation of the sub-section to private companies only, because, as many of the objectors have failed to observe, the conditions were to be alternative and not cumulative. On the the other hand, it would have been perfectly easy for any person to form a public company having none of these attributes and yet actually under the control of a single person. As in the case of sub-section (1), we are also impressed with the importance of having the real purpose of the enactment clearly stated in the body of the sub-section The most important feature of the sub-section as now drafted is perhaps the proviso that it is not to apply to a company which is a subsidiary company on which the public is substantially interested.

Sub-section (3) provides that any firm, association or company must be given an opportunity of being heard before orders are passed under the section. Sub-section (4) provided in the case of a firm or association that the additional tax payable by a member, may, in default of payment by him, be recovered by the firm or association, and in the case where the individual members of a company have become liable to additional tax in respect of undistributed profits, that the proportionate part of the tax payable on such undistributed profits shall be recoverable only from the company. Sub-section (5) provides that where undistributed profits have been included in the total income of individual members of a company they shall not, if they subsequently distributed be taxable again in the hands of the individual." (Report of the Select Committee.)

ASSESSMENT OF BOGUS COMPANIES AND FIRMS.

The object underlying the introduction of this section is to prevent the avoidance of income-tax and super-tax by companies, firms or other association of individuals by the adoption of certain devices. When the I.T.O. is satisfied that a company, firm or other association of individuals is adopting any of the devices mentioned in sub-sections (1) and (2) of section 23A he should obtain the approval of the Asst. Commissioner to assess the individual members on their share of the profits and gains and if it is accorded, proceed to assess accordingly. The Asst. Commissioner should give the firm, company or association of indi-

viduals as the case may be, a hearing before he directs the I.T.O. to refrain from determining the sum payable as income-tax by it and make the assessment on the members.

Section 23-A is not one of the sections mentioned in section 58. Consequently "Income-tax" in section 23-A (1) and (2) means "Income-tax and Super-tax". It follows that the I.T.O. under these sub-sections must refrain from determining the amount of their income-tax or super-tax payable by the firm, association or company—I.T.M, para 71-A.

SCOPE AND EXTENT OF ITS APPLICATION.

The introduction of a new section is expressly meant to put a check to seemingly lawful but fraudulent means of hoodwinking the claims of the Crown. Sub-section (1) is inapplicable to Hindu undivided family and companies. It applies to firms only, such firms are to be under the control of one member thereof and where such firm has been formed avowedly "for the purpose of evading or reducing the liability to tax of any members thereof." The Income-tax Officer with the previous approval of the Assistant Commissioner may proceed to pass an order. Where one man contributes the major portion of the capital, it must not be presumed that the formation is for the purpose of evasion.

Sub-section (2) is applicable to companies alone so that the rights of Crown are not affected in any way by any lawful but fraudulent means. The Income-tax Officer must be satisfied that the company is under the control of not more than 5 of its members. He has further to see that the accumulation of profits is not beyond its "reasonable needs" or where reasonable part of its profits has not been distributed amongst its member and that the accumulation is for the purpose of evading tax the Income-tax Officer with the previous approval of the Assistant Commissioner may assess the individual member of a company as a separate assessee. Explanation (b) points out about companies which are substantially interested where public have got control over such shares with having 25 per cent of the voting strength.

APPEAL.

As section 23A gives a very wide power to the Income-tax Officer, the legislature has enacted a new section 33A allowing the assessee right of appeal against any order passed under sub-section (1) or (2) of section 23A within 30 days from receipt of the notice of such order. Thus section 23 (A) is appealable. (For details vide section 33A).

24 (1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set-off against his income, profits or gains under any other head in that year.

Set-off of loss in computing aggregate income.

(2) Where the assessee is a registered firm, and the loss sustained cannot wholly be set-off under sub-section (1), any member of such firm *or any person who being a minor has been admitted to the benefits of partnership in such firm* shall be entitled to have set-off against any income, profits or gains of the year in which the loss was sustained in respect of which the tax is payable by him such amount of the loss not already set-off as is proportionate to his share in the firm *or to his share of the benefits of partnership, as the case may be.*

SCOPE AND EXTENT OF ITS APPLICATION.

Section 24 provides that an assessee is entitled to claim set-off of any loss sustained by him under any head of income against profits or gains from any other head. Section 24(1) is intended to apply to unregistered firm, whereas section 24(2) is expressly meant for registered firm. Thus where an assessee in an unregistered firm incurs a loss of Rs. 4000 and the assessee has eight annas share in the firm, he is entitled to claim set-off of loss of Rs. 2000 against the income which he has individually made.

It has been said under section 9(1) that the annual value of the property of an assessee cannot be reduced to a minus figure and that no loss under the head can be set-off against income, profits or gains of any other head. But in the case of *Karam Elahi Mahamad Safi*, 116 I. C. 547 it was held that a factory loss can be set-off against the profit from house property. In the case of *Arunachallam Chettyar*, 47 Mad. 660, it was held that a partner of an unregistered firm would be entitled to set-off losses incurred in partnership business against the profit earned by him individually in other business; similarly in the case of *Munishawami Chetty*, A. I. R. 1924 Mad. 205, 1 I. T. C. 227 it was held that loss from a business can be set-off against income from other business.

The Madras High Court has held that section 24(2) is applicable to the case of a registered firm but under section 24(1) it has been decided that a partner in an unregistered firm can claim set-off of his share and can claim as well set off just like a partner in a registered firm.

PARTNERSHIP LOSS IN UNREGISTERED AND REGISTERED FIRMS.

"Where an individual is a partner in two separate firms of which one is registered and the other unregistered and has no separate personal income, he should be allowed, in dealing with any application for refund under section 48, to set-off his share of any nett loss incurred by the unregistered firm against his share of the profits of the registered firm. For example, A having a half share in an unregistered firm which incurred a net loss of Rs. 2000 in one year, had in the same year no personal income liable to assessment to income-tax in his own hands, but had a similar share in another registered firm which had made a net profit of Rs. 10,000. Such cases will be rare and should be dealt with on the basis of real income, *i.e.*, in the case above quoted A should get a refund so adjusted that he shall suffer finally tax of 5 pies in the rupee on his real income of Rs. 5000 minus Rs. 1000 *i.e.*, 4000. The same principle would apply if both firms were registered. Where the situation is reversed, *i.e.*, where the registered firm makes a loss and the unregistered firm a profit obviously no relief can be given. Nor can an unregistered firm claim to set-off losses of the individual partner against the income of the firm. But a partner in a registered firm should be allowed to set-off loss incurred in his individual capacities against his income as partner in dealing with any application under section 48." (I.T. Manual.)

CONSTRUCTION OF SECTION 24.

Section 24 of the Income-tax Act must be construed in the widest and most liberal manner—*In re : Khan Saheb Mahamad Nagui*, 32 P.L.R. 418.

BAD DEBTS AND SET OFF.

The Act nowhere, in terms, authorises the deduction of bad debts of a business, such a deduction is necessarily allowable. What are chargeable to income-tax in respect of a business are profits and gains of the year and in determining profits or gains of a year, account must be taken of losses incurred and losses must be incurred in the year of account.

"Whether a debt is a bad debt and if so, at what part of time it became a bad debt, are questions which in their Lordships' view, are questions of fact, to be decided by the appropriate tribunal and not by the ipse dixit of any one else"—*In re : Sir S. M. Chitambar*, 127 I.C. 772 (P.C.)

The mere absence in the Act of a provision for loss in respect of a time-barred debt is no ground for disallowing it, but whether such loss can be claimed in any particular year or not is a question of fact to be determined upon the circumstances

of each case. It is apparent, therefore, that it is permissible under section 24.—*Commissioner of I. Tax, Bombay v. Khemchand Ramdas*, A.I.R. 1933, S. 148.

SET-OFF OF DEPRECIATION.

Where an assessee carries more than one business and the profits therefrom are not at all sufficient to cover depreciation, excess depreciation can be set-off against the profits of his other business. *In the matter of A. M. S. Chetyar*, 123 I. C. 801. But in the case of *Ballarpur Collieries*, 122 I. C. 689, the Income-tax authorities, while computing the taxable income of the assessee did not allow the claim for depreciation but made an observation that the claim should be carried forward to be considered only in the year of profit. But the High Court held that the provision of section 24 is clearly applicable.

WHAT IS LOSS.

An assessee may sustain losses for various reasons and a claim for set-off can certainly be made on all losses provided these are losses incurred solely for the purpose of earning profits. It has been held in the case of *Gangasagar*, 120 I. C. 435 : A. I. R. 1929 All. 969, that where an assessee purchases shares and the price exceeds the face value, the excess is no loss. In the case of *Forbes*, A. I. R. 1929 Pat. 1419, it was held that a commission paid to a banker for realising interest on Government securities is not a loss of profits or gains. It has been held that where there is a bonafide loss, a man can always set it off against his income, profits or gains under the same head and in exceptional cases where the loss is so heavy that it more than counter-balances the whole of the profits under that head, it may be carried over to another head for full relief—*In re : Mahammad Naqui*, 132 I. C. 1. Where properties of two business are distributed on their dissolution, interest sought to be deducted, represents capital loss and not trading loss and consequently the assessee has no claim to a set-off u/s 24—*In re : K. Sidha Goudar & Sons*, 137 I. C. 680. (the cases of *Commissioner Inland Revenue v. Burrell* 9 T. C. 27 ; *In re : Armitage*, 3 ch. 357 and *In re : Crichton's Oil Co.* 2 ch 86, are approved).

BURDEN OF PROOF OF LOSSES.

An assessee is entitled to have his losses set-off against his income in any year, but he is not competent to claim that right unless he proves the losses and the losses cannot be held to be satisfactorily proved by merely showing the figures of purchases and sales during the year without showing the opening balance. "When once income has been admitted, the burden of proving losses is on the assessee, who alleges them and the losses cannot be said to be satisfactorily proved

unless all the particulars with regard to them are clearly shown and a very important particular with regard to such losses must be the opening balance at the beginning of financial year the losses are said to have occurred": (*In the matter of Rallukrishna Ramnarayan*, 117 I. C. 217 : A. I. R. 1929 Nag. 153.

LOSS HOW TO SET-OFF

Where more businesses than one are carried on, it has to be ascertained whether they have resulted in a profit or whether one or some of them have resulted in a profit and others in a loss. If it is discovered that there has been a loss in one or more of them, that loss can be set off under section 24, against profits or gains of other business of whatever description.

The words "loss of profits or gains" in section 24 mean trading loss ; but capital loss as opposed to trading loss cannot be allowed.

24A. (1) When it appears to the Income-tax Officer that any person may leave ^{Assessment in case of departure from British India.} British India during the current financial year, or shortly after its expiry, and that he has no present intention of returning, the Income-tax Officer may proceed to assess him on his total income for the period from the expiry of the last previous year for which he has been assessed to the probable date of his departure from British India. For each completed previous year included in this period an assessment shall be made on the total income of such person at the rate at which it would have been charged had such income been fully assessed, and for the period from the expiry of the last of such previous years to the probable date of departure, the Income-tax Officer shall estimate the total income of such person and assess it at the rate in force for the financial year in which such assessment is made :

Provided that nothing herein contained shall authorise an Income-tax Officer to assess any income, profits or gains which have escaped assessment or have been assessed at too low a rate in respect of which he is debarred from issuing a notice under section 34.

(2) For the purpose of making an assessment under sub-section (1), the Income-tax Officer may serve

a notice upon such person requiring him to furnish, within such time not being less than seven days as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (2) of section 22, setting forth (along with such other particulars as may be provided for in the notice) his total income for each of the completed previous years comprised in the period first referred to in sub-section (1) and his estimated total income for the period from the expiry of the last such completed previous year to the probable date of his departure ; and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under sub-section (2) of section 22.

ASSESSMENT IN CASE OF DEPARTURE FROM BRITISH INDIA.

The introduction of this section has been made primarily for providing assessment in case of departure from British India. Under this section, (section 24 A 1), when it appears to the income-tax officer that any person may leave British India during the current financial year or shortly after its expiry and that he has no present intention of returning, the income-tax officer may proceed to assess him on his total income for the period from the expiry of the last previous year for which he has been assessed, to the probable date of his departure from British India.

PROCEDURE.

The new section 24A is aimed primarily at enabling assessments to be made at once, on the income of persons from whom it may be difficult to recover "income-tax and super-tax" after they have left British India (*e.g.* members of a touring theatrical company).

When such an emergency arises, the income-tax officer may serve a notice upon such person requiring him to furnish, *within such time not being less than seven days* as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (2) of section 22.

The person on whom the notice is served, shall have to set forth his total income for each of the completed previous years comprised in the period first referred to in sub-section (1) and his estimated total income for the period from the expiry of the last such completed previous year to the probable date of his departure.

A notice, under this section requiring a person to furnish a return within a prescribed time, shall be considered a

return under section 22 (2) and all the rights and liabilities of that section will follow as a matter of course.

***24B.** (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.

(2) Where a person dies before he is served with a notice under sub-section (2) of section 22 or section 34, as the case may be, the Income-tax Officer may serve on his executor, administrator or other legal representative a notice under sub-section (2) of section 22 or under section 34, as the case may be, and may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of sub-section (2) of section 22, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer, may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person.

SIGNIFICANCE OF SECTION 24 B (1)

Clause (1) of section 24B provides the extent and liability of executors, administrators and other legal representatives of a deceased assessee. This clause evidently covers such cases where assessment is made on a person, who dies subsequently but before realisation of the demand. But this clause

* Incorporation of a new section to provide assessments in cases, where there was no legal sanction before.

does not authorise the I. T. O. to make an assessment on a person who is long dead; the procedure of assessment of persons served with a notice u/s 22(2) has been laid down in clause (3).

The only equitable construction possible under clause (1) is that where an assessment is completed on a person according to the provisions of the Act and subsequently it transpires that the person so assessed is dead, before or after the service of the notice of demand u/s 29 of the Act, tax charged on such a deceased person, has been made payable by his executor, administrator or other legal representative.

Clause (1) is not a charging section, but rather a machinery one. It provides the method for the recovery of the tax due by the deceased assessee. If any importance can be attached to the "marginal note" of the clause, it will be found that this clause implies that tax of deceased person is payable by representative. The incorporation of this clause supplies the lacuna by giving legal sanction enabling the Income-tax Officer to realise tax of the deceased assessee as a matter of right.

IMPLICATION OF SECTION 24B(2).

As a general practice, the taxing department maintains a Register of persons, who are served with notices under section 22 (2)

Section 24B (2) lays down the procedure to be followed when a person dies before he is served with a notice u/s 22(2) or under section 34. When such a contingency arises, the Income-tax Officer may serve notice under section 22 (2) or under section 34, on the executor, administrator or other legal representative of the deceased person and may proceed to assess the total income of the deceased person, as if such executor, administrator or other legal representative were the assessee.

This is rather a provision for the assessment of the deceased assessee in the hands of his executor, administrator or other legal representative, as distinguished from a case of succession under section 26 of the Act.

Obviously the intention of the Legislature is to assess the "total income of the deceased person through his executors etc. It follows therefore as a necessary corollary that executors, administrators or other legal representatives cannot be treated as successor.

The underlying motive for inserting clause (2) of section 24B is to nullify the provision of section 26 of the Act which provides that a successor is liable to tax for "business, profession or vocation" and nothing else.

This clause enables the Income-tax Officer to assess the deceased person through executors etc., a distinct departure from the previous Act. Before this amendment, the Income-tax Officer could fall back on the successor under section 26 of the Act which still makes the successor liable when he succeeds his predecessor in "business, profession or vocation." Thus on the death of a lawyer or a medical practitioner, the successor could not be made liable for the professional income. This present amendment removes the loophole of the previous Act.

Procedure to be followed, when a person dies without furnishing a Return u/s 22(2) or furnishing an incomplete or incorrect return :—

Under the previous Act, there was no provision, express or implied in case of any such contingency. Of course the Income-tax Officer was entitled to accept the Return, where it was duly furnished, and make an assessment under section 22(1) and in case of non-compliance within the due date, a best judgment assessment before the death of the assessee was permissive in practice.

But the Indian Income-tax Act does not run *pari passu* with the English Act, still where reference to the English Act is possible, it should be utilised properly.

Rule 18 of the General Rules of England runs thus—

"Where any person dies without having delivered a statement of all his profits or gains chargeable to tax with a view to an assessment thereon in due course, an assessment in respect of the profits or gains which arose or accrued to him before his death may be made at any time within the year of assessment or within three years after the expiration thereof, upon his Executors or Administrators and the amount of the tax thereon shall be debt due from and payable out of the Estate."

This is akin to the present clause. Before this amendment, there was a regular legal difficulty and consequently recovery of tax by the normal procedure was out of question, except in case of voluntary deposit.

To strengthen the hands of the Executive, this clause specifically provides for such an emergency.

Section 24B(3) now enables the Income-tax Officer to make an assessment on the total income of a deceased person, and for this purpose may require from the Executor, Administrator or other legal representative of the deceased person any accounts, documents or

other evidence which he might require under the provisions of sections 22 and 23 from the deceased person.

RETROSPECTIVE OR PROSPECTIVE.

Section 24B cannot be retrospective in operation and it came into operation from 11th of September 1933, when it received the assent of the Governor General in Council.

ASSESSEE—MEANING OF LEGAL RIGHTS AND LIABILITIES.

The term “assessee” as defined under section 2(2) “means by whom Income-tax is payable” and in terms is applicable to a living person.

In the miscellaneous Chapter under head “Anomalies in the Act”, an attempt has been made to show how loosely and vaguely the word “assessee” has been used. The incorporation of section 24B has widened to some extent the scope of the term “assessee” and thereby creating more complications.

So far as the term “assessee” is considered, it has been used so loosely all throughout the Act that one is constrained to give one meaning in one place and another meaning in another place.

Section 22 does not speak of “assessee”. It refers to person liable to pay Income-tax and having regard to the definition of the term “assessee” in section 2 (2), service of notice u/s 22 does not make the person an “assessee” then and there.

Where an assessment is made under section 23(1), the person so assessed is an “assessee”. But when an assessment is made at nil under section 23(1), the person so assessed cannot be called an “assessee” if the term “assessee” as defined in section 2 is strictly interpreted. Sections 23(2) and 23(3) speak of person and not of “assessee”.

Section 24 of the Act speaks of “assessee” when he shares profits in one head and loss under another head, no matter whether he is liable to tax ultimately or not.

Section 24A speaks of “any person” only, while section 24B(1) speaks of a “person” only. But section 24B(2) speaks of a “person” and of an “assessee” and section 24B (3) mentions a person.

Section 24B (2) has by implication made the Executor, Administrator or other legal representative “assessee” although the assessment is made on the total income of the deceased. through the Executor etc., and such Executors *etc.*, are to be deemed as assessee, for the purpose of this section only and consequently all the rights and liabilities of an “assessee” as defined in section 2, will automatically follow.

Section 25(3) speaks of "assessee" but other clauses refer only to "person".

Sections 27, 28 and 29 of the Act speak of "assessee". Section 27 especially says that a person served with a notice u/s 29 is an "assessee". In the absence of any express provision, the heirs are not assessee, except where assessment has been made under section 24B(2).

From the wording of section 24B(2), it appears that the Legislature intends that the term "assessee" is applicable to cases coming under section 24B(2) and consequently executors, administrators, and other legal representatives are to be treated as "assessee" when an assessment is made u/s 23 read with section 24B(5).

Thus where an assessment u/s 23(4) is made on a person who dies, subsequently the heirs etc., are not entitled to file a petition u/s 27 or an appeal u/s 30.

The Act goes so far as to authorise representative of a deceased person or person disabled to receive such refund or to make such claim for the benefit of such person or his estate. Thus the new section 49B provides right to relieve or claim refund by the executor, administrator or other legal representative of an assessee who is dead etc.

But there is no such provision in section 27 and it is an axiomatic truth that the *express mention of one thing implies the exclusion of another*.

25. (1) Where any business, profession or vocation no which income-tax was not at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued in any year, an assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

Assessment in case of discontinued business.

(2) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income-tax Officer may direct that a sum shall be recovered from

him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business, profession or vocation up to the date of its discontinuance.

(3) Where any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

(4) Where an assessment is to be made under sub-section (1) or sub-section (3), the Income-tax officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

NOTES AND PROCEDURE.

As a matter of fact and of law, a new business is not assessed on the year it is started, which means, there cannot be any assessment of the business in the first year of its existence because of the fact that there is no 'previous year'.

This general rule has its exception under section 25 of the Act. Sub-section (1) of section 25 empowers the Income-tax Officer to make an assessment of the business which is said

to have been discontinued during the year. This means an assessment for the previous year and an additional assessment for the year in which a business, profession or vocation is closed down. Section 25(1) refers to profits and gains which are taxable under sections 10 and 11 and further this section is inapplicable and inoperative where Income-tax was not levied under the Act of 1918. The Income-tax Officer has a discretion to assess any business of the above description under section 25(1) in case there is any reasonable apprehension of loss of revenue, otherwise, the Income-tax Officer will not exercise this special provision. The rate of tax will be that which is in force in the year of assessment. Touring companies, moving cinemas, theatrical parties and *jatra* parties and other business in general, come within the purview of section 25(1). It has been held in *In the matter of Dinanath Hemraj* that where a firm ceases to function its business, tax for the period of business can be levied. (100 I. C. 756).

SECTION 25(2).

This section places a statutory obligation on the assessee to communicate to the Income-tax Officer by way of notice within 15 days from the date of discontinuance otherwise the I. T. O., may impose a penalty for such failure. Any imposition of penalty is, however, appealable.

SECTION 25(3)

While section 25(1) relates to such business, profession or vocation not chargeable to Income-tax under the Act of 1918, section 25(3) relates to such cases alone which were charged to Income-tax under the provision of the Act of 1918. Under this sub-section where a business, vocation or profession is discontinued in any part of the year, the assessee can claim refund for the broken period by showing that he has sustained a loss.

An assessee should get the benefit of this section, if he has both a business and a profession and discontinues only one of them. If he has more businesses than one and discontinues one or more but not all of them provided they are all distinct genuine businesses for which separate accounts are maintained and are not mere branch businesses, the assessee must be allowed the benefit of section 25(3).

There is no period of limitation as to time when an application under this section is to be made. But as a matter of practice an application can be made, provided it is made not later than the end of the year following that in which the business, profession or vocation is discontinued.

"Provisions of section 25 apply to the complete stoppage or discontinuance of a business, profession or vocation and

do not apply to any change in the proprietorship. Where there is any change in the proprietorship merely, the provision of section 26 applies."

DISCONTINUANCE.

Where a company carrying on a business went into voluntary liquidation and the liquidator transferred the business to a new company which continued the business it was held that this was not a case of discontinuance within the meaning of section 25 but is really a case under section 26: *In re. M. H. Shanjana and Company, Ltd.* 50 Bom. 87: 95 I. C. 517. Discontinuance means a complete stoppage of the whole business and cannot include cases of partial stoppage—*Highland Railway Co. v. Special Commissioner*, 2. T. C. 151. But whether two or more distinct trades or businesses are carried on or whether there are truly two departments of one business, is a question of fact—*Howden Boiler and Armaments Co. Ltd. v. Stewart*, 9 T. C. 205 and *Scales v. George Thompson & Co. Ltd.*, 13 T. C. 83.

In *Kalumal Shorimal v. Commissioner of I. T., Punjab*, 3 I. T. C. 341, when a son relinquishes his right, title, and interest in favour of his father with power to realise arrears, there is no discontinuance within the meaning of section 25(3).

ASSESSEE.

Although strictly speaking the word assessee means a person by whom income-tax is payable, under this section the expression has been so loosely and vaguely used that it can be safely taken to include heirs and personal representatives of the assessee. It was held in the case of *Gorinda Saran*, 105 I. C. 556 that heirs of a deceased assessee may be allowed to claim refund and to participate. The Patna High Court in A. I. R. 1930 Pat. 81 held that proceedings do not abate on the death of the assessee and heirs must be allowed to be heard. By an analogy it can be construed that heirs have the same rights and privileges as enjoined on the assessee. Attention is also drawn to the case of *Mitchel and others v. Macnel & Co.*, 31 C. W. N. 630.

25A. (1) Where, at the time of making an assessment under section 23, it is claimed by or on behalf of any member of a Hindu family hitherto assessed as undivided that a partition has taken place among the members of such family, the Income-tax Officer shall make such inquiry therein to as he may think fit, and

Assessment after partition of a Hindu undivided family.

if he is satisfied that a separation of the members of the family has taken place and that the joint family property has been partitioned among the various members or groups of members in definite portions he shall record an order to that effect :

Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.

(2) Where such an order has been passed, the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such, as if no separation or partition had taken place, and each member or group of members shall in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in subsection (1) of section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it ;

and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 23 :

Provided that all the separated members and groups of members shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family as such.

(5) Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family.

SCOPE OF THE SECTION.

Section 25(A) will only apply if a member of a Hindu undivided family claims that it has become divided. If, however, the family prefers to go on being assessed as undivided though really divided, the Income-tax Officer has no authority to act under this section. (I.T.M., para 54).

DECIDED CASES.

It has been held in a case where the assesseees who are four brothers, constituting a joint family, filed separate sworn statements before the officer that they had become divided in *status*

inter se, ten years ago but the officer treated the declarations as false, and refused to accept the petition and actually assessed them as joint family, that at any rate on the date when the statements were made, the brothers had become divided in status by reason of their declarations. (Vol. 2, Part 7, Page 381, *Srinibasam*).

JOINT FAMILY OR NOT.

The Calcutta High Court in the case of *Gangasagar Ananda Mohan Saha*, 33 C. W. N. 1190: A. I. R. 1930 Cal. 178, held: "there can be hardly any doubt that specific portions of the properties or specific properties have been assigned to specific co-parceners. This amounts to cessation of joint estate." It was held that the assessment should be as an unregistered firm.

But in the case of *Harisingh Santok Chand*, 2 I. T. C. 80, it was held that where there was separation and where partners appropriate the profits in definite shares and where there was individual dealings and capital account in the name of each member, it would constitute a joint family. (Attention is invited to the case of *Ganappa Chetyar*, 2 I. C. 381).

DISTRIBUTION OF JOINT FAMILY.

Vide the case of *Kalu Mal Shuri Mal*, 103 I. C. 522: A.I.R. 1929 Lahore 461.

WHETHER RETROSPECTIVE.

Effect of section 25A is not retrospective as has been observed in the case of *Arunachallam Chetyar*, A. I. R. 1929 Mad. 769. "It may often happen that a joint family can claim separation on the ground of separate messing and definite allocation of shares and enjoyment thereof. The trend of present ruling is to treat such family as unregistered firm. To me it seems that whenever any claim for separation is made, it is the duty of the Income-tax Officer to enquire into the allegation and to come to a definite conclusion whether there has been any change in the status. In case of separation of the joint estate, the assessee can be treated as unregistered firm."

SECTION 25A(3).

Apart from this decision, the Act of 1930 has very definitely made it clear that where no order of separation has been passed, such family shall be deemed to continue as Hindu undivided family.

SECTION 25A WHEN APPLICABLE.

Section 25A is operative and applicable, when the assessee claims at the time of assessment u/s 23, that a separation has

taken place. This claim of separation shall have to be made by a member or by all members. The income-tax officer has no jurisdiction, when no claim is made, to make an adjudication on this point.

There is nothing in the Act that such a claim is to be made in writing, it can be claimed orally as well.

Section 25A says : "where at the time of making an assessment." Evidently it means that a claim for separation can be made when the final assessment is taken up. This does never mean that such a claim is not maintainable when notice under section 22(2) has been issued or not. All that it requires is that before any assessment is made, any claim to be treated as divided, is to be adjudicated before the actual assessment is made. Where such a claim is forthcoming, it is mandatory on the Income-tax Officer to make such enquiry as he deems proper. Before any final order is recorded, it is incumbent on the Income-tax Officer to issue notices of inquiry on all the members of the Hindu undivided family.

When an order u/s 25A is allowed, assessment is to be made on the total income of each member and all such members are jointly and severally liable for the tax.

The procedure to be followed by the Income-tax Officer is to treat the divided family, as undivided for the time being and then to complete the assessment as if no separation has taken place. At the time of issuing demand notice, the Income-tax Officer has to apportion the tax in accordance with the shares allocated to each member. It is desirable when each member is jointly and severally liable, different demand notices should be issued for better realization and smooth working of the section.

Where an order under section 25A is allowed, tax is levied on the total income received by the members jointly, but the privilege conferred on the Hindu undivided family under section 14(1) that the tax shall not be payable by an assessee in respect of income which he receives as a member of a Hindu undivided family, is taken away.

The Income-tax Officer has no authority to refuse an application on the ground that all co-parceners have not joined in their claims, but the language of section 25, cl. (1) is quite clear, it states : "where at the time of making an assessment under section 23, is claimed by or on behalf of any member of a Hindu family." So any member can claim jointly or separately.

APPLICATION AT THE TIME OF MAKING AN ASSESSMENT
UNDER SECTION 23.

It has been said that where a claim under section 25A is allowed, notwithstanding the finding that family stands divided, all members and groups of members are jointly liable for the tax on their total income. The section refers to a claim being made at the time of assessment and possibly it refers to cases of this nature *e. g.* when *A. B. C.* three brothers in 1934-35 claim separation within the meaning of section 25(a), the income of the three brothers for the previous year is assessed jointly, no matter if the separation takes place after the accounting year.

But suppose the above 3 brothers who applied under section 25(A), had no joint family business in 1932-33, but had individual business income, it does not stand to reason why each of them should not be assessed individually. It may be contended that the Hindu undivided family during the assessment year 1932-33 should have brought this to the notice of the Income-tax Officer that the family stood divided and failure to put forward the claim in 1932-33 deprives the assessee to enjoy separate assessment in 1933-1934. There is much force in this contention and reading the section itself, there is hardly any scope for the members to claim separate assessment in the year, when a claim u/s 25A is made and allowed.

But what would be the position where a claim under section 25A is made at the initial stage, say when only notice under section 22(2) has been served ; cannot the members come forward and say that as the separation has been claimed not at the time of making an assessment under section 23, but at the earliest stage, why the immunity of separate assessment should not be enjoyed by the members.

The contention may be plausible, but it is neither logical nor it is sound. To me it seems that "where at the time of making an assessment under section 23" only gives a long rope to the assessee to put forward his claim at any time before assessment is made and nothing else. In *Maharaja of Darbhanga A. I. R. 1933 P. 123* the expression "where at the time of making an assessment under section 2" means "where time comes to make assessment".

APPLICABILITY OF SECTION 25A AND JOINT FAMILY
PROPERTY HAS BEEN PARTITIONED—
MEANING OF.

Section 25A refers to a partition among the members of the Hindu undivided family and the Income-tax Officer has been satisfied that a separation has taken place and that the

joint-family property has been partitioned among the various members or groups of members in definite proportions.

Section 25A is not applicable to a case where there is an allegation of partial division of a particular portion of the joint property.

Section 25A contemplates a case where a distribution of the family occurs; so that a joint family as such, ceases to exist and function and no property belonging to the Hindu undivided family, retains the character of a joint-family property.

It is immaterial whether it is divided by metes and bounds or is held in defined shares. This is perfectly clear from the language employed by section 25A, sub clause (1) which provides that "where at the time of making an assessment under section 23.....in definite portions he shall record an order to that effect".

What the section contemplates is "a separation of the members of the family" which implies that the status of certain members undergoes a change. In other words, they cease to be members of the joint family. It is an elementary rule of Hindu law that a mere declaration of an intention to separate, brings about a disruption of the family, at any rate, so far as the members making the declaration are concerned.

Partition of the joint family property by metes and bounds is not a necessary requirement of the disruption of the family. If the properties remain in tact but the separating members share in them is well defined or rather definite, they are nevertheless considered as "partitioned".

Partition within the meaning of section 25A is not necessarily a "partition" by metes and bounds. The proviso to sub-section 2 lends support to this view "provided that all.... .. such."

But where members agree to divide among themselves a particular joint property, keeping their status and the rest of the joint family intact, they cannot be regarded as "separate members, *Birulhmal Lodh v. Income-tax Commissioner*, A. I. R. 1954. All. 217.

In the case of *Sher Sing Nathairam v. Income-tax Commissioner of Punjab, Delhi*, 137 I. C. 273., where a decision is being waited as to the meaning of the term "partition."

POWERS OF INCOME-TAX OFFICERS.

The Income-tax officer has inherent jurisdiction to ask the assessee to prove the alleged partition. An assessee must be given opportunity to prove his allegation and refusal to hear

him makes the assessment a nullity *In Radhey Lal Bal Mukunda* 1930 A. 1549.

The Income-tax officer is not bound to allow separation where he is confronted with a registered deed, which does not discharge the onus on the part of the assessee and he may on sufficient evidence hold that notwithstanding execution of the deed, there has been no disruption, *Ghanashyam Das Ram Kumar v. Commissioners, B. & O.*, 6 I.T.C. 198. In the case of *Mathura Das & Sons*, A. I. R. 1933 L. 815, it has been held that a mere division of the property in a will even though it be a registered one is no evidence of such.....division and cannot confer title. Such a document cannot be deemed to be evidence of disruption of a Hindu undivided family within the meaning of section 25A Income-tax Act.

Under section 25A it is open to the Income-tax Officer to arrive at a finding against the declaration made. Where an alleged partition deed talks of the separate character of the business, carried on by some of the members of the family, that alone does not imply a disruption of joint family—*In Chokey Lal Murlidhar*, A. I. R. 1932. All. 471., 4 I. T. C. 7. Similar observations were made in the case of *Jan Saha Nathu Saha v. Commissioner, Punjab*, 6 I. T. C. 165, 138 I. C. 187, relying on the Calcutta High Court cases of *Brijlal v. Commissioner of Income-tax, Bengal*, 4 I. T. C. 369. It has been held that the Income-tax officer can decide a question as to dissolution or existence of a joint family and that finding of fact cannot be interfered with by the High Court.

Merely because the Income-tax Officer accepts the allegation of the assessee that there has been a partition in certain year, he is not debarred from considering the truth about the fact of partition in the next year. The fact that assessee's allegation has been accepted in the previous year, may possibly alter the burden of proof—*In the matter of Mathura Das & Sons v. Commissioner Income-tax, Lahore*, A. I. R. 1933. L. 815, 147 I. C. 273.

The income-tax officer has power to hold in the face of a registered deed that there has not been any separation. He has authority to ask for all possible details of evidence of separation—*In Pyuri Lal v. Commissioner of Income-Tax*, 147 I. C. 862.

JOINT-FAMILY IF CAN BE REGISTERED.

Section 26A is not independent of section 25A and necessarily the contention that the income-tax officer has no option but to register a joint-family where he is faced with a registered deed, is erroneous. The very definition of a "Firm"

involves a contractual relationship between several persons and where the finding of fact of the Income-tax Officer is that there is no contractual relationship between these persons, but the relationship between them is that of a Hindu undivided family, that is a relationship based on a status and not on a contract and there is no firm in existence which the Income-tax officer can possibly register under section 26A according to the provisions of law—*In Peyari Lal v. Commissioner of Income-tax*, 147 I. C. 862.

26. (1) Where, at the time of making an assessment under section 23, it is found that Change in constitution of a firm. a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessment on the firm and on the members thereof shall, subject to the provisions of this Act, be made as if the firm had been constituted throughout the previous year as it is constituted at the time of making the assessment, and as if each member had received a share of the profits of that year proportionate to his interest in the firm at the time of making the assessment.

(2) Where, at the time of making an assessment under section 23, it is found that the Change of ownership of business. person carrying on any business, profession or vocation has been succeeded in such capacity by another person, the assessment shall be made on such person succeeding as if he had been carrying on the business, profession or vocation throughout the previous year, and as if he had received the whole of the profits for that year.

EFFECT OF SUCCESSION UNDER SEC. 26(2).

Rate and Accounting year.

An unregistered firm may succeed a registered firm and *vice versa* and an individual may likewise succeed a firm and *vice versa*. The rate of tax applicable to the successor will depend on his status; and a question may arise whether a successor is bound to follow the previous year of his predecessors. Under section 2(11) an assessee has the option to adopt his own previous year and once it is adopted it must be adhered to; of course an assessee can have his accounting year changed with the previous permission of the Income-tax Officer. The successor under section 26(2) is practically a new assessee

with liability to pay tax of his predecessor but this liability does not go so far as to deprive him of his free choice to adopt any previous year or accounting year he prefers.

SPLITTING UP AND AMALGAMATION OF BUSINESS.

"Where a business is split up or part of the business is transferred to the next year where a succession occurs, the income derived from each fraction or part should be assessed separately at the rate applicable to it. It is not correct to make a consolidated assessment and apportion the tax so computed amongst the different proprietors."

"A single assessment should be made on the successor in respect of the profits of all its predecessors and of himself if it existed in the previous year taken together. Where a concern is split up into two or more concerns, the position will be similar except that, if there is simultaneously any change in the status of the assessee (firm converted into a company or *vice versa*) the assessment will be governed by the status at the time when the assessment is made. Where a person disposes of a part of his business to another, there is succession in respect of that part and the same principles will apply."

SECTION 34 IF APPLICABLE.

If the successor is bound to pay the tax of his predecessor, there is no bar to make the successor liable under section 34 for previous year's tax escaping assessment. But in the absence of any provision directly or indirectly, it may be contended that the successor cannot be made liable under section 34.

NOTES.

As amended in 1928, section 26 has mainly to deal with two factors, namely in section 26(1), (a) change in the constitution of the firm and under section 26(2) (b) change in the ownership of business, profession or vocation.

In case of change in the constitution of the firm, the assessment on the firm and on the members thereof shall be made as if the firm had been constituted throughout the previous year and as if each member had received a share of profit of that year proportionate to his interest in the firm at the time of making the assessment.

Section 26(2) is applicable to cases where there has been a succession in the business, profession or vocation. Successor is liable to pay the tax of his predecessor as if he had received the whole profit of the year.

SCOPE AND SIGNIFICANCE OF SECTION 26 (2).

Section 26 (2) is primarily intended to secure to the Crown, tax, based on the earnings of a business for a full year, notwithstanding the transfer of business from one person to another before the expiry of the year, provided of course the business was carried by the transferee. If the transferor and the transferee are separately taxed for profits earned by them during the period each of them carried on the business, the incident of taxation would be seriously affected; and if the profits or gains of the whole year though enjoyed by two different persons are liable to be taxed at the end of the year, should be made responsible for it, leaving it to him to settle the equities between him and the transferor with regard to the appointment of such taxation.—*In the matter of Commissioner of Income-tax v. Sindh Light Railway*, A. I. R. 1932 S. 192.

Similar observations are made in the case of *Commissioner of Income-tax v. Best and Company Limited, Madras*, A. I. R. 1932 M. 434, where it is said that section 26 (2) is evidently designed for the purpose of making somebody assessable to income-tax, but the intention underlying it is not to assess two people at the same time, but is to find out somebody who is either properly assessable or more conveniently assessable. Section 26(2) read as a whole, definitely brings within its ambit a person who though not the former owner of the Company, was found to be owning that company in the assessment year, that person is to be assessed. This procedure is not only convenient, but rather reasonable and just. But upon whom the burden is ultimately to fall is a matter of arrangement between the vendor company and the purchaser company.

SUCCEEDED IN SUCH CAPACITY BY ANOTHER
MAN—MEANING OF.

The plain meaning of the words "succeeded in such capacity by another person" can best be put thus, where a business, profession or vocation formerly carried by a person, have been directly taken over by another person who continued the business, that transference of ownership whether it be by operation of law or by transfer inter vivos, amounts to a succession, pure and simple.

Thus where a change of ownership occurs, the test to be applied is to determine whether there has been a succession. Section 26 (2) is therefore applicable to cases where there is a change in the ownership of business, although there has been no change in the character of the business or of its management.—*Maharajulhiraj of Darbhanga v. Commissioner of Income-tax*, A. I. R. 1923 P. 123. relying on *Bell v. National Provident Bank of England*, 1904 1 K. B. 149.

In order to constitute a succession to a business, the entire business must be transferred as a going concern with all its accessories *e.g.* accounts, books, list of customers, and goodwill, otherwise it will be a mere sale of a portion of a business—*Watson Brothers v. Lothian*, 4 T. C. 941. C. J. Page in *Commissioner of Income-tax, Burma v. N. N. Firm*, A. I. R. 1934 R. 13 observes : "In order that a person should be held to have 'succeeded' another person in carrying on a business, profession or vocation, it is necessary that the person succeeding should have succeeded his predecessor in carrying on the business as a whole. When a business is split up and thereafter another person carries a part of the business, I am of opinion that he does not 'succeed' his predecessor in carrying on the business within the meaning of section 26 (2). Further, where there is no continuity in carrying on the business and when one business has come to an end and after a time another business is started, it may be with the same assets and under the same conditions and in the same premises as the old business, the person carrying on the business 'does not succeed' those who had carried the old business within section 26 (2) of the Act."

We find therefore where an excise vendor loses his excise shop which is being settled with another man, the person succeeding is not a "successor" within the meaning of the Act. Similarly where on the termination of an agency, some other person secures that agency, that person is not a successor within the meaning of the Act.

SUCCEEDED AND SUCCESSION—MEANING OF.

It is no doubt true that the words "succeed" and "succession" primarily refer to succession by one person to the property of another person on his death. But these words have been used for every many years both in English and the Indian statutes relating to taxation in a much wider sense and as meaning a transfer *inter vivos* by one person to another of any business, profession or vocation.—*Commissioner of Income-tax v. Sindh Light Railway*, A. I. R. 1932 S. 192.

WHERE AT THE TIME OF MAKING AN ASSESSMENT U S 23—MEANING OF.

The meaning of the expression is plain, the words merely mean "when time comes to make an assessment" *In re: Maharaja of Darbhanga*, A. I. R. 1933 Patna 123. It cannot mean when the assessment year begins.

"IN SUCH CAPACITY"—MEANING OF.

By capacity is meant a position enabling one to do some thing—*Commissioner of Income-tax v. Sindh Light Railway*, A. I. R. 1932 S. 196.

Section 26 primarily refers to some change either in the constitution or in the ownership and makes the successor liable to tax.

It is therefore to be seen if such a succession makes any difference on the rate of tax to be imposed on the successor. There may be regular change in the status *e.g.* an unregistered firm may succeed a registered firm or vice-versa, and an individual may succeed a Hindu undivided family, an individual may further succeed a company and so on and so forth. In each case the rate of tax will depend on the status of the successor, no matter what was the status in the accounting year. This has now been the established law after the decision of the *Western India Turf Club*, 32 C. W. N. 457. Their Lordships of the Privy Council held : "where an unregistered association is converted into a limited company, the rate of super-tax applicable to it, in respect of the profit of the association, for the year previous to that of conversion, is the flat rate of one anna in the rupee appropriate to a company."

In order to give effect to the decision of the *Western India Turf Clubs* 32 C. W. N. 457 P. C. and also of the Bombay case of the *Commissioner of Income-tax v. Mellor*, I. L. R. 48B 304 in preference to the view enunciated in *Begg Southerland & Co.* 2 I. T. C. 36, this section has been recast. Privy council held that though the income that is taxed is that of previous year, the rate of tax applicable to the income is that laid down in the Finance Act of the year of assessment and the rate that is leviable is that applicable to the class of assessee mentioned in s. 3, to which the successor belongs—In *Mahammad Hossen Lobbi Co.* 3 I. T. C. 431, following the decision of *Nchalchand Kisori Lal* 2 I. T. C. 338, where it has been laid down that where a registered firm succeeds to business of a Hindu undivided family, the assessment must be on the firm as constituted at the time of assessment namely as a registered firm and the rate of tax will be that applicable to a registered firm under the Annual Finance Act.

ACCOUNTING YEAR.

Question may arise whether a successor is bound to follow the previous year of his predecessor. U/s 2, (11) an assessee has option to adopt any previous year he likes but once it is adopted, it must be adhered to, of course an assessee can have that accounting period changed with the previous permission of the Income-tax officer.

A successor is not a new assessee, there is continuity of business which can stand in his way of changing the accounting period at his sweet will. Where an assessee is treated as a new one, of course there he is entitled to claim any previous

year as his accounting year. But the word "successor" evidently refers to continuity of action and a new assessee who does not succeed to a business cannot be called a successor to the original business.

But there is no bar for such an assessee to request the Income-tax Officer to allow him a different accounting period, which the Income-tax Officer has authority to allow. The procedure for the assessment of an assessee who has been permitted to change his accounting period u/s 2, should be followed in all respects, and the nature of the change of accounting period permitted, and the conditions on which permission is granted should be clearly recorded by the Income-tax officer in his assessment order.

SUCCESSOR IF LIABLE U/S 34.

When a successor is assessed u/s 23 read with section 26 (2), to a business on the income enjoyed by his predecessor and when it transpires that profits of the predecessor in the year before the year of succession have escaped assessment, an assessment may be made u/s 34 on the successor and not on the predecessor, no matter when the succession took place—whether before or after the assessment of the predecessor. The expression "previous year" as defined in section 2 (11) of the Act is for the purpose of assessment to be made and not the year previous to that in which the assessment is made, if that is different. The fact that the succession resulted in a change of the status of the assessee does not alter the situation.

In *Commissioner of Income-tax, Madras v. Nachel Achi*, A. I. R. 1934 M. 63, it has been held that the Income-tax officer can proceed to assess the successor as if he were the predecessor, if in the course of making the assessment, the income-tax officer discovers that another person is the successor to that predecessor. He can then and there assess that person u/s 26 (2); and indeed that section makes it clear that proceedings do not have to be commenced de novo and that an assessment can then and there be made.

It has further been held that when income has escaped assessment, section 34 can be utilised making the successor liable and if such an assessment on the successor is otherwise valid, it is not invalidated by the fact, that the succession took place after the close of the year in which the income escaped assessment.

ENGLISH DECISIONS IF OF ANY HELP IN DETERMINING SUCCESSION.

The Indian Income-tax Act does not run *pari passu* with the English Income-tax Act, but so far change of ownership

and succession are concerned, there is virtually no difference between the two.

Under the English Act, where the owner of a business retires during the year of assessment, and is succeeded therein by another person, the Commissioners after giving the persons concerned an opportunity of appearing and making any representations before them, will adjust the assessment for that year by relieving the predecessor and charging the successor with a fair proportion thereof. Even where the predecessor kept no account and accurate statement of his profits cannot be procured, the successor has a statutory right to be assessed upon the basis of those profits or gains.—*Oglivie v. Barron*, 11 T. C. 504. In such case the quantum of the profits should be estimated by reference to the assessment raised upon the predecessor for the relative years.

RAPID SUCCESSION.

A situation which may arise with some frequency can be seen in the case of a semi-succession, when the option under rule 11 is not adopted, followed by a complete succession, or a second semi-succession when that option is adopted, within a short space of time. While the amended rule does not indicate precisely what the position of any original proprietor retiring at the first change, will be, in view of the consequential amendments arising out of the second, the balance of probability appears to be to their becoming liable to possible additional assessment. If this should be the case, a savour of apparent hardship may result, while, if it should not, a door is left open for avoidance of tax in favourable circumstances (Newport).

Closely connected with the question of the transfer of the business is that of their amalgamation. Where two or more businesses are amalgamated, the assessments on the combined business will be computed on the combined profits of the separate businesses until sufficient time has elapsed to allow of the computation being entirely on the profits arising since the amalgamation.

Where a company goes into liquidation the liquidator is liable for tax on any profits or other untaxed income arising during the course of the winding up. *Irish Provident Association v. Kavanagh*, 4 A. T. C. 115.

Under the English Act, a succession to business is possible by purchase, or by formation of a company taking up the business of the firm and such a conversion amounts to succession. *Ryhop Coal Company v. Foyer*, 1 T. C. 343. To constitute succession, there must be an identity of business—*Reynolds Sons & Company Limited v. Ogston*, 15 T. C. 501

It has been laid down that succession does not cover a case where there has been an accidental acquisition by a trader, who continues in business, of the customs left by another who goes out of the field—*Thomson & Balfour v. Lepage*, 1924 A. C. 27. In *Watson brothers v. Lothian*, 4 T. C. 441, where there was a transfer of business without accounts and goodwill, such transfer was not a case of succession. Where a bank purchases the business of another bank, there is a succession—*Bell v. The National Provincial Bank of England Limited*, 1904, 1 K. B. 149; similarly where a business is sold by an individual to a company, there is a succession—*Bartlett v. Commissioner of Inland Revenue*, 7 T. C. 229.

The trend of Indian decisions is on the English line as has been pointed out.

26A. (1) Application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income tax or super-tax.

(2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed; and it shall be dealt with by the Income tax Officer in such manner as may be prescribed.

SCOPE.

Section 26A lays down the procedure to be followed in registration of firms. Where registration is sought for by the firm, any partner can apply to the Income-tax Officer that the firm in which he happens to be a partner, has been constituted under an instrument of partnership specifying the individual shares of the partners.

Rule 2 lays down that any firm constituted under an instrument of partnership specifying the individual shares of the partners, may register with the Income-tax Officer on application in this behalf made by the partners or by any of them within a prescribed period. Rule 3 prescribes a standard form which must be presented after due verification together with a copy of instrument of partnership; while rule 4 lays down the procedure to be followed by the Income-tax Officer.

POWER OF INCOME-TAX OFFICER.

Income-tax Officer has power to inquire u/s 26A whether a person or a body of persons is or are what he or they represent themselves to be for the purpose of taking advantage of a provision of this Act. When persons claim to constitute a partnership firm for the registration of which they make an application the Income-tax Officer may call upon them to prove by evidence that they are what they claim to be before he proceeds further with the application—*In the matter of Jattu Saha Nathu Saha v. Commissioner of Income-Tax, Lahore*, A. I. R. 1932 L. 575, the case of *Biseswar Lal Brījal*, A. I. R. 1930 Cal. 449 approved.

It cannot be said that Income-tax Officer is bound to register a firm when he is confronted with a deed of partnership. It is said he has no discretion but he has got to register it. But so far as Hindu undivided family is concerned, the position is totally different. The very definition of the word "firm" involves the idea of contractual relationship between several persons and where the finding of fact by the Income-tax Officer is that there is no contractual relationship between the persons, but the relationship between them is a relationship based on a statute and not on contract, there is therefore no existence of firm which can possibly be registered u/s 26A—*Piyarilal and others v. Commissioner of Income-tax Lahore*, A. I. R. 1933 L. 827, 147 I. C. 862.

ORDER REFUSING REGISTRATION IF APPEALABLE.

Section 30 now provides that an appeal lies against an order refusing registration u/s 26A. The Central Board of Revenue has prescribed a standard form namely, Form D 1 for the purpose of appeal. (Vide Rules portion).

AD INTERIM APPEAL.

There is nothing in the Act to warrant the suggestion that a wrong order of an Income-tax Officer as a preliminary to his passing an order u/s 23 of the Act may not be made a ground of appeal when appealing against the final order of assessment, unless a separate appeal or application for review, where no appeal is allowed, has been successfully filed against such order. As a matter of fact, the tendency of the Legislature has always been to prevent appeals against interim orders leaving it open to the party aggrieved to challenge such order when appealing against the final order—*Bulchand Kesob Das*, A. I. R. 1930 S. 301.

But with due respect to the learned Judge, I do not see any logical reason in view of the wording of section 30, as to why an adinterim appeal should not be filed, at least under special circumstances. As a matter of practice, in almost all

cases, long before the passing of final orders, claims under section 25A and 26A are to be determined by the Income-tax Officer. Appeal under section 30 shall ordinarily be presented within 30 days of receipt of the notice of demand. Suppose for instance, where an order under section 26A refusing to register a firm, is made in the month of July and the assessment under section 23 is completed in September: if the assessee prefer an appeal against the order refusing to register the firm u/s 26A and also against the final assessment, is he entitled to present his appeal within 30 days from the date of the final assessment against refusal to register the firm. The section as it stands specifically mentions that appeals shall be ordinarily presented within 30 days of the intimation of the order of refusal to register a firm u/s 26A. In this case the order refusing registration of firm is made in July and the assessee is also furnished with the information of such refusal by that date, he cannot in my opinion file an appeal u/s 30 after 30 days on receipt of the notice of demand e.g. in October: the appeal will be treated as barred by limitation unless the Assistant Commissioner entertains the appeal by virtue of his power u/s 30(2). Although the Assistant Commissioner may admit an appeal after the expiration of the period, and although the expression "ordinarily" gives wide power to the Assistant Commissioner in entertaining an appeal even after limitation, it is, nonetheless risky to wait up to the final assessment.

REVIEW AND REFERENCE.

Section 33 is an omnibus section which can be invoked in the case of orders refusing registration u/s 26A. The general principle of law is that where an assessee can take recourse to direct appeal, he shall not be permitted to apply u/s 33 without exhausting the intermediate remedies e.g. where an assessee can prefer a direct appeal u/s 30, he should not be allowed to file a petition of Review u/s 33 of the Income-tax Act; he can prefer an appeal u/s 30 and in case the decision is against him, he can then move the Commissioner u/s 33. But where an assessment is made u/s 23(4), I think, the assessee can go direct to the Commissioner in matters relating to refusal of registration u/s 26A. In the previous Act, there was no provision for an appeal against an order refusing registration u/s 26A and that is why the Commissioner was approached to interfere u/s 33. As there has been specific provision for appeal against refusal to register a firm, I think the intermediate remedies should be exhausted first and then other remedies.

Reference u/s 66 will follow as a matter of course against an order of the Assistant Commissioner u/s 31 of the Act read with section 26A and a reference shall also lie from an order

u/s 33 only on a question of law arising out of that order itself, and not on a question of law arising out of a previous order u/s 31 or section 32, revised by the order u/s 33.

OBJECTS AND REASONS.

"We realise that it should not be possible for persons to obtain registration of an enterprise as a registered firm which is in fact nothing more than a one-man concern and we think the object in view can be satisfactorily made by making provision for the verification of an application for registration and by imposing an amendment of section 52 of the Act as a penalty upon any one who makes a false verification".

NOTES AND PROCEDURE.

An application for registration of a firm is governed by rule 2 under section 2 clause 14 and must be presented in the prescribed form within the prescribed period, and such application is to be renewed every year. An application for registration may be refused by the Income-tax authorities but an appeal lies against such refusal. *Ramlal Muralidhar*, A. I. R. 1931 Cal. 682 ; 134 I. C. 1056.

The way in which an application for registration is to be made and how the deed of partnership is to be drawn up has been dealt under section 2, clause 14.

27. Where an assessee or, in the case of a company, the principal officer thereof, Cancellation of assessment when cause is shown. within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 22, or that he did not receive the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last-mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 23.

CONSEQUENCES OF FAILURE TO FURNISH A RETURN OR TO COMPLY WITH A NOTICE UNDER SECTIONS 23(2) AND 22(4).

Where an assessee fails to file a return under section 22, he is liable to assessment under section 23(4). Similarly where an assessee does not comply with the requisition under sections 22(4) and 23(2), summary assessment will be the result.

Besides summary assessment, the assessee loses his right of appeal under section 30(1) and he is further liable to criminal prosecution under section 51(c).

REMEDIES AGAINST ASSESSMENT UNDER SECTION 23(4).

When an assessment is made u/s 23(4), no appeal lies against such an order. But the assessee has been given a right to file an objection u/s 27 before the Income-tax officer within one month from the receipt of the notice of demand. Section 27 is applicable under the following circumstances:—

(a) Where the assessee was prevented by a sufficient cause from making the return u/s 22 or

(b) Where he did not receive the notice issued u/s 22(4) or section 23(2) or

(c) That he had no reasonable opportunity to comply or was prevented by sufficient cause.

When the I. T. O. is satisfied that non-compliance was due to any of the causes mentioned above, he shall record an order to that effect, cancel the assessment and proceed to make a *denovo* assessment according to the provisions of the Act. Similarly where the Income-tax Officer refuses to reopen the case u/s 27, he must record an order in writing to that effect. The assessee if aggrieved, can u/s 30 file an appeal before the Assistant Commissioner against the order of the Income-tax Officer refusing to reopen the case u/s 27, within 30 days from the date of the communication of the order.

Section 27 of the Indian Income-tax Act corresponds with order 9 Rule 13 of the Civil Procedure Code, wherein it is stated that

“in any case in which a decree is passed *ex parte* against a defendant he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree as against him upon such terms as to costs, payment into court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.”

In the Income-tax Act there is no provision of mulcting the petitioner with costs.

PROCEDURE.

When a notice of demand is served on the assessee, it is for him to see if the assessment has been made u/s 23(4) or under any other section of the Act. The notice of demand clearly shows the remedies open to the assessee and the section under

which the assessment has been completed. If the assessment is under section 23(4), the assessee may file an objection within a month from receipt of the notice of demand, u/s 27 before the Income-tax Officer for setting aside the assessment for a fresh assessment. Section 27 gives the assessee a month's time to file the objection and the income-tax officer cannot extend the period of limitation on any account. Section 5 of the Indian Limitation Act is inapplicable to cases falling under the purview of section 27. An objection petition u/s 27 does not require any court-fees.

Whenever a petition u/s 27 is filed, it is for the income-tax officer to fix a date of hearing, but there is no bar for the I. T. O. to dispose of the petition u/s 27 without calling on the assessee. The section as it stands, nowhere says even by implication that the Income-tax Officer is bound to fix a date of hearing and it cannot be contended that the assessee is entitled to a hearing, although such a hearing is allowed to the assessee in almost all cases as a matter of practice. Sections 28, 31 and 32 definitely state that the assessee should be heard, but there is no such clause in section 27. In the absence of any wording in that direction, the Income-tax officer can refuse to give a hearing and can dispose of the petition u/s 27 on merits, if any.

It has already been stated that an appeal lies against an order refusing to reopen a u/s 27, but in presenting the appeal a certified copy of the assessment order is essential and that the prescribed form of appeal should bear a court-fee stamp of /8/- annas.

SUFFICIENT CAUSE.

The expression "sufficient cause" has not been defined in the Act. But reading section 27 as a whole we find that non-receipt of notice u/s 22, 22(4) or 23(2), under certain circumstances is a "sufficient cause" within the meaning of section 27 of the Act. But in the absence of any definition, we can fall back upon other Indian Acts for guidance. Sufficient cause is purely a question of fact, but a question of law arises where the income-tax officer has exercised his discretion arbitrarily and in a manner not warranted by law. Heavy assessments in themselves cannot be characterised as arbitrary. What is sufficient cause is mainly a question of fact to be adjudicated upon by the income-tax officer on the circumstances of each case.

Section 5 of the Indian Limitation Act though inapplicable to the Income-tax Act, except u/s 66 (3) and 66 (3) (A) by the insertion of section 66 (7A), can be conveniently taken recourse to in deciding what constitutes sufficient cause.

(a) Illness may be a sufficient cause where proofs are forthcoming that he was physically incapable to attend to any duty; illness of the pleader and client's ignorance of it constitute "sufficient cause"—*Anandamayee v. Purna*, 9 M. I. A. 26.

(b) Imprisonment in jail is a sufficient cause—*Maharaj Kumar v. Banaji*, 21 P. R. 1904.

(c) Mistake committed by the officer of the Court is a sufficient cause—*Dalget v. Ramratan*, 25 I. C. 26. Mistake of counsel if made bonafide is a sufficient cause—*Pritchard v. Pritchard*, 14 Q. B. D. 55, *Jonson v. Warwick*, 67 Q. B. 516, *Corporation v. Anderson* 10 Cal. 445. The mistake referred to must be bonafide i.e. made inspite of due care and attention—*J.N. Surti v. Chaitiar Firm*, 4 R. 265.

The tendency of recent English decisions is to disallow extension of time on the ground of mistakes of counsels—*In re ; Helsby*, 1894, 1 Q. B. 742.

But mistake or ignorance of law is not a sufficient cause *Ramjibon Mal v. Chund Mal*, 10 All. 587. A new statement or exposition of the law altering the view of the law by High Court or Privy Council is not a sufficient cause—*Mowri v. Suredra*, 10 W. R. 178. Poverty does not constitute sufficient cause neither negligence of pleader, clerk, appellant or agent or servants do constitute "sufficient cause."

JUDICIAL PRONOUNCEMENTS AS TO WHAT CONSTITUTES "SUFFICIENT CAUSE".

The Income-tax Officer has a discretion u/s 27 to decide whether under the circumstances there is a sufficient cause. He must arrive at an adjudication on the light of balance of probabilities. Income-tax Officer should be guided in his assessment by Judicial consideration. He must not act arbitrarily, capriciously or whimsically. Of course heavy assessments do not necessarily constitute arbitrary assessments.

In *Arunachalam Ayyar v. Subbarmiyah*, 46 Mad. 61, the Madras High Court characterised the proceedings as extremely harsh and the assumption baseless, but refused to interfere with the assessment, although in the case of *P. K. N. Chettiar Firm* 8 R. 213, it has been held that the I. T. O. must be guided in his procedure by a judicial spirit and come to a judicial conclusion.

At the same time the Income-tax Officer cannot act in a purely arbitrary manner. "Suppose a person whose income had not in the past exceeded Rs. 5000/- in any year, makes a default as contemplated by the sub-section, the I. T. O. would perpetrate an injustice if he took advantage of the default and assessed the income for the accounting period at a million

rupees without any justification. An assessment resting upon the whims and caprice of the I. T. O. cannot be elevated to the dignity of an assessment made to the best of his judgment." *In the matter of Mahammad Hayat Haxi Mahammad Sardar*, 131 I. C. 81.

In *P. G. N. B. R. Chaitiar Firm*, A. I. R. 1930 R. 78, it has been held that the Income-tax Officer exercised his discretion properly.

In *Ram Kumar Mohonlal*, 119 I. C. 569, an application u/s 27 stated that compliance was not possible as books of accounts had been filed in a criminal case and were not returned but on the failure of the assessee to furnish the Income-tax Officer with a copy of the order rejecting the prayer for return of books, which the I. T. O. specifically wanted, an assessment u/s 23(4) was made. The High Court refused to interfere as there was no sufficient cause.

In *Lochmandas Baburam*, 47 All. 631, the High Court refused to interfere, holding that there was no sufficient cause. "As the period which was given for the production of accounts was a long one, it cannot be said that the assessee has no reasonable opportunity. The word 'prevent' in section 27 involves some definite, active cause making compliance with the order impossible and not a passive cause."

Section 27 confers a discretion to the Income-tax Officer to exercise it properly. Chief Justice Schwabe in *Arunachalam Ayyar v. Subarmiah*, 46 Mad. 62 observes: "when for some reason a man has not attended a case in court and there is no sufficient explanation of his absence, the case, by reason of this, is allowed to go *ex parte*. If he comes to court afterwards and asks that his case may be restored to file, the question to be considered by the court is not whether by some human possibility, being wise after the event, he could not have got there in time or whether a man who has studied his Railway guide a little better, would not have got in another train or taken another route, but whether a man honestly intended to be in the court and did his best though in his stupid way, to get there in time but for the intervention of an inevitable accident for which he was in no way responsible, it is the duty of the court, in my judgment, to set aside the judgment, mulcting in proper cases, delinquent man in costs. In all those cases, this universal panacea for healing wounds, as it has been called in England will properly be applied. It is not right in cases of this kind that the man should have his case disposed of without being heard. These Courts are here so that people who have cases can have those cases heard and determined, and it should never be the intention of the

court that a man should be deprived of a hearing unless there has been something equivalent to misconduct or gross negligence on his part or something which cannot be put right."

In *Rajarimal Kalyanmal v. Commissioner of Income-tax*, U. P., 3 I. T. C. 451, it has been held that sufficient cause is a mixed question of law and fact. Where there has been an improper exercise of discretion, a question of law arises.

U/s 27, the Income-tax Officer has to determine whether the assessee was prevented by a sufficient cause from complying with the requirements of the law as set out therein. That is essentially a question of fact and not of law. If the assessee satisfies the Income-tax Officer that in the circumstances of the case he was prevented from complying with the requirements of law, it is provided that the Income-tax Officer "shall" cancel the assessment. He has no option or discretion in the matter. For these reasons the law on this subject enunciated in 6 R. 21, 7 R. 669, 8 R. 203 and 209, must be held to be incorrectly laid down, and these cases protanto must be regarded as overruled.—*Abdulbari Chaudhury v. Commissioner of Income-tax*, A.I. R. 1931 R. 194, 9R. 281.

Recent decision lends support to the fact that where through forgetfulness etc., return u/s 22 is not submitted, it does not constitute "Sufficient Cause".—*Lalit Kumar Mitra v. Commissioner of Income-tax, Behar and Orissa*, 140 I. C. 712.

As in appeal against an order refusing to reopen the case u/s 27 so in a petition u/s 27, the Income-tax Officer cannot enter into the merits of the case.—*In Pratap Chandra Ganguly*, A. I. R. 1932 Cal. 411.

Where an assessment is made u/s 23(4) to the best of his judgment on an assessee who deals in business of motor service, the assessee cannot claim in a petition u/s 27, that depreciation allowance should have been allowed. It is to be noted that when an assessment is made u/s 23(4), all expenses incidental to the business must be assumed to have been considered in arriving at the net income assessed.—*Government mail Motor service v. Commissioner of Income-tax, Lahore*, 136 I. C. 707.

REASONABLE OPPORTUNITY.

The phrase "reasonable opportunity" has not been defined in the Act. What is a reasonable opportunity is a question of fact to be determined by the Income-tax Officer on the circumstances of each case. What the law requires is that an assessee must be allowed reasonable opportunity to comply with any requisition. It may be necessary to grant him further extension of time for submitting his return when

adjustment of accounts is not possible owing to some difficulty (where the business is extensive and accounts rather voluminous.)

An assessee should be given sufficient time to produce his books of accounts, where he has got several branch businesses in and outside the territorial jurisdiction of the Income-tax Officer by whom he is assessed. The Patna High Court in the case of *Satchidananda Singha*, 3 Patna, 664 held that the assessee was not given any reasonable opportunity.

In my opinion it is a question of fact pure and simple and a question of law can only arise where the Income-tax Officer has improperly denied an opportunity to the assessee.

QUESTION OF MERITS.

Whenever a petition u/s 27 is filed or an appeal is preferred against the order of the Income-tax Officer refusing to reopen the case u/s 27, the Income-tax Officer or Assistant Commissioner as the case may be, is to adjudicate only on the point if there is a "sufficient cause" within the meaning of the section. He has absolutely no discretion to decide on merits. The assessee cannot contend that he has got no assessable income, or that the assessment is excessive and unduly harsh and in total disregard of book profits. Whatever may be the contention, the Income-tax Officer must stay his hands on points thus raised, simply because section 27 does not authorise the Income-tax Officer to decide a case on merits. Section says that where there is a "sufficient cause", the Income-tax Officer "shall cancel" the assessment, but where points raised and pressed are something otherwise, the Income-tax Officer is simply out of his jurisdiction.—*In re : Pratap Chandra Ganguly*, A. I. R. 1932 Cal. 411.

BURDEN OF PROOF.

In a proceeding u/s 27, onus lies on the assessee and if he fails to produce any evidence in support of his application that the summary assessment u/s 23(4) should be cancelled, that would be a ground for refusal to cancel the assessment. If he adduces evidence, it is for the Income-tax Officer to determine the weight to be attached to such evidence. *Abdullahi Chaudhuri v. Commissioner of Income-tax, Burma*, A.I.R. 1931 R. 194, 9 R. 281.

WHO CAN FILE OBJECTION u/s 27.

Strictly speaking an assessee is a living person by whom income-tax is payable. The term "assessee" has been defined u/s 2(2) of the Income-tax Act. From the wording of section 27, we find that the term "assessee" has been used but no reference has been made to a person. It therefore stands that

an assessee alone is competent to show cause for cancellation of assessment and as such an "assessee" can only file an application u/s 27.

But if we go through the whole Act we find that the term "assessee" has been very loosely used all throughout. The first thing to notice is the definition of "assessee" as defined under section 2(2) of the Act. Assessee means a person by whom income-tax is payable and it is quite clear that the definition in terms is only applicable to living persons, the words being "a person by whom income-tax is payable" and not "a person by whom or by whose estate income-tax is payable."

The question that confronts us is whether the heir or the legal representative etc. of an assessee is entitled to apply u/s 27. When the heirs etc. are assessed on the death of the assessee, they step into his shoes and enjoy the same rights and liabilities. Where an assessee dies before filing the return, the Income-tax Officer has no jurisdiction to assess the deceased assessee, he is bound to issue a fresh notice on his successor, whoever he may be. (As to the effect of the insertion of section 24(b), attention is invited below). When an assessee dies filing a return within due date or extended date, the Income-tax Officer has got to accept it or he must fall back on his successor. The Calcutta High Court in the case of *Mitchel v. Macniel & Co.*, 31 C. W. N. 630 has held that the heirs have got no locus-standi and that the estate of a deceased person is liable for the tax of the deceased.

In the case of *Govinda Saran*, A. I. R. 1927 Oudh 465, it has been held by an obiter that the word "assessee" for such purposes includes persons who represent estate of a deceased and that if taxable by the estate, it also can claim refund. The Patna High Court in the case of *Maharaja of Darbhanga v. Commissioner of Income-tax, Behar and Oriesa*, A. I. R. 1930 Patna 91, held that the heirs can be heard and substituted in a petition of reference u/s 66 of the Income-tax Act. On the other hand the Bombay High Court in the case of *Ellis. C. Reid*, A. I. R. 1931 B. 333 was of opinion that there was no logical reason why the privilege conferred on a living person could not be equally enjoyed by his heirs or administrator. Justice Beaumont observes : "I think one must do a certain amount of violence to the language of section 27 or else hold that the privilege conferred on a living person assessed under sec. 23(4) of getting the assessment set aside is not to be enjoyed by the estate of a deceased person. A distinction in which I can see no logical reason."

Section 24(B) is a machinery section, which has been inserted owing to practical difficulties for realising tax and

it is primarily meant for administrative convenience. Section 24(B) nowhere definitely says that such heirs etc. are assessee, but by implication it says "as if such executor, administrator or other legal representative were the assessee."—*Vide* 24(C)(2). Section 49B makes a special provision by giving power to representatives of deceased persons or person disabled to make claim on his behalf.

It has been judicially noticed that if the Legislature intends to assess the heir, executor etc. to tax, charged on the deceased the Legislature must provide proper machinery and not leave it to the Court to endeavour to extract the appropriate machinery out of the very unsuitable language of the statute. As a result of this, section 24(B) with all its sub-clauses has been inserted. Section 24(B) is primarily intended more as a machinery section than as a charging section.

Section 24B(1) clearly lays down that the tax of a deceased person is payable by his heir or executor, sub-clause (2) provides the procedure to be followed where a person dies before he is served with a notice u/s 22(2) or u/s 34, while sub-clause 3 lays down the procedure to be followed when a person dies with having furnished a return which he has been required u/s 22 or having furnished an incomplete return.

The Act nowhere defines that an assessee includes heirs or executors but by virtue of section 24(B) we find that when an assessee dies his heirs, administrators, executors or other legal representatives are answerable to authorities, tax can be realised as a matter of course and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the "assessee."

On a reference to section 24B we find in the marginal note "Tax of deceased person payable by representative." If any weight is to be attached on the marginal note, heirs etc. cannot be regarded as assessee. It must be remembered that sub-clauses 2 and 3 of section 24B unmistakably point out that the total income of the deceased person may be assessed and they do not say clearly that heirs etc. are the assessee for the purpose of assessment. But in view of the fact that heirs etc. can be called upon to comply with any requisition relating to the accounts of the deceased, it may be fairly inferred that heirs etc. are competent to file objections under section 27 at least in cases coming under sub-clauses 2 and 3 of section 24B.

It is quite clear that notwithstanding any express provision to the contrary, the legislature has widened the meaning of the term assessee, intending that the privilege conferred on

a living person assessed under sec. 23(4) of getting the assessment cancelled is also to be enjoyed by his heirs. To me it appears that this is a case of *Casus Omissus*.

REVIEW UNDER SECTION 33 IF LIES.

There is no bar to entertain a petition under section 33 by the Commissioner of Income-tax : *P. G. N. Chettyar firm*, 8 Rang, 203.

PROPRIETY OF CONTINUING OBJECTIONS AND APPEALS FOR TWO YEARS IN ONE APPLICATION.

In *In the matter of Nawal Kishore Khariatilal*, 132 I. C. 857 it was laid down that Income-tax authorities must not allow one application for two years. This is improper.

28. (1) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that an assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount, he may direct that the assessee shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of the income-tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income.

(2) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under this Act governing such distribution, and that any partner has thereby returned his income below its real amount, he may direct that such partner shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of income-tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other

adjustment shall be claimable by any other partner by reason of such direction.

(3) No order shall be made under sub-section (1) or sub-section (2) unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.

(4) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(5) An Assistant Commissioner or a Commissioner who has made an order under sub-section (1) or sub-section (2) shall forthwith send a copy of the same to the Income-tax Officer.

DISCRETIONERY OR MANDATORY.

Does of the expression "may direct" in section 28(1) lend colour to the view that action under section 28 is discretionary, pure and simple? It is for the Income-tax Officer to decide whether he should proceed under section 28 or not.

IN THE COURSE OF ANY PROCEEDINGS. —MEANING OF.

The Income-tax authorities must be satisfied, before starting proceedings under section 28, that there has been a concealment of income or that there has been improper distribution of profits. But this satisfaction must be in the course of any proceedings. It therefore stands that the discovery of concealment or improper distribution of profits must be detected in the course of any proceeding and a proceeding under the Income-tax Act includes cases falling under sections 22, 23, 30, 31, 32, 33, 46, 48 and 49. Section 46 refers to mode and time of recovery of taxes and necessarily it is a proceeding within the meaning of the Act. When assessment has been completed and tax realised for the year under assessment, a notice under section 28 is not maintainable.

The expression "in the course of any proceedings" under the Act in section 28(1) means in the course of proceedings which terminate in assessment *e. g.* that is the original assessment and all powers to make use of section 28 cease in respect of the return which resulted in that assessment.

The Allahabad High Court in the case of *Mayaram Durgaprosad v. Commr. of Income-tax*, *C. P.*, 5 I. T. C. 471 especially lays down that section 28 is not maintainable in a supplementary proceeding u/s 34.

CONCEALMENT.

Concealment is a question of fact pure and simple. An omission of a petty item may be concealment. It is for the Income-tax Officer to determine whether it is an act of omission due to inadvertance or it is an act of commission. An act of commission is tantamount to malafide concealment whereas an act of omission due to ignorance or inadvertance, is not an act of concealment in the literal sense of the term within the meaning of the Income-tax Act. The extent and the circumstances under which the income is omitted should be the guiding basis.

DELIBERATELY.

The use of the expression "deliberately" clearly indicates that accidental slip, mistakes or omission do not attract the provisions of section 28. The Income-tax Officer is to be satisfied that there has been a deliberate suppression of income *e.g.* inaccurate particulars have been furnished wilfully to hoodwink the department. In the absence of any deliberate intention to furnish inaccurate particulars, imposition of penalty is not justified.

PARTNERSHIP PROFIT.

Under section 22(2) read with section 38 of the Indian Income-tax Act, an assessee is required to submit his return and to furnish the Income-tax Officer with the names of the members of the firms, or of the manager or adult male members of the family with addresses. The prescribed form of return u/s 22(1), under serial no. 10 clearly states "any source other than those mentioned above including any income earned in partnership with others". Thus omission to put this in the return is a serious matter and the Income-tax Officer is justified in imposing penalty under section 28 for this non-disclosure.

Since section 22(2) requires the person on whom a notice has been served to submit a return of his total income during the previous year, it is implied that income of branch business, if any is also to be furnished, no matter where the branch is situate.

REGISTERED FIRM AND IMPROPER DISTRIBUTION OF PROFIT.

Section 28(2) applies to a case where the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under this Act, governing such distribution. It therefore stands that when distribution of profits has been made improperly, in direct disregard of the instrument of partnership, section 28(2) comes into operation.

Where the partner of such a registered firm returns his income below the real amount, the Income-tax Officer is within his jurisdiction to impose a penalty u/s 28. Cases falling within the purview of section 28(2) as indicated above, are penal inasmuch as no refund u/s 48 or other adjustment shall be claimable by any other partner by reason of such direction. Before imposition of penalty, the partner should be allowed a reasonable opportunity to represent his case. An *ex parte* decision behind the back of the assessee is not contemplated under this section.

REVISED RETURN—EFFECT OF—ON PENALTY.

Under section 22(3) the assessee is entitled to file an amended return ; but this does not absolve him from being penalised u/s 28, if the original return filed under section 22(2) is found to be false. Of course subsequent filing of a revised return before assessment is completed may be an extenuating circumstance and due consideration should be paid to it. But there is nothing in section 22(3) that an offence is to be condoned where revised or amended return is filed. *In re : Gangasagar*, 28 A.L.J. 26.

In the case of *Commissioner of Income-tax v. A. R. M. A. L. A. Arunochalam Chaithiar*, A.I.R. 1932 Mad. 433, it has been definitely held that although the revised return may for the purposes of assessability to income-tax, be treated as a revised return u/s 22(3), the Income-tax Officer is entitled to look at the previous false return and is u/s 28 entitled to inflict a penalty on the person who has made it.

I see no reason to differ from the view expressed by the High Court and I am of opinion that a revised return u/s 22(3) cannot condone the offence committed in the original return u/s 22(2), but I think that such an amended return should always weigh with the Income-tax Officer as to the amount of penalty to be imposed. After the filing of a revised return u/s 22(3) the I.T.C. can with the approval of the Assistant Commissioner prosecute the assessee u/s 52 of the Act in respect to the original return. But it must be understood that penalty and prosecution for the same offence are not permissible. An assessee may be prosecuted for one offence and penalised u/s 28 for other offences in the same return.—*Narayandas Mohonlal v. Commr. of Income-tax, U.P.*, 6 I.T.C. 248.

MAXIMUM PENALTY AND THE RIGHT OF THE ASSESSEE TO ADDUCE EVIDENCE.

The maximum penalty that can be imposed u/s 28 is a sum representing the difference between the tax on the income declared by the assessee and the tax on the income ascertained

under the Income-tax Act in respect of which assessment has been made.

In an enquiry u/s 28 as to whether penalty ought to be imposed, evidence adduced by the assessee is relevant and admissible, not for the purpose of varying or affecting the assessment made for the purpose of imposing the tax under the Act, but in order to show either that no penalty ought to be imposed or that the amount of the penalty ought to be less than the maximum prescribed u/s 28 and the Income-tax Officer will not be justified in refusing to admit such evidence. The power to levy penalty is not tenable in a supplementary proceedings u/s 34 where the supplementary proceedings have not been properly started.—*Abdul Kader Maracayar*, 54 M.L.J. 298, 2 I.T.C. 372.

The view I have taken is on the basis of decision in *Commissioner of Income-tax, Burma v. A. A. R. Chettiar concern*, 142 I.C. 758. It may be mentioned in this connection that it is not incumbent on the Income-tax Officer to levy maximum penalty, his discretion in imposing penalty is unfettered, which even the appellate authority cannot interfere. An order u/s 28 should clearly show—

1. The amount of income concealed,
2. The amount of tax that would have been evaded had such concealment been successful.

WHO CAN IMPOSE PENALTY ? u/s 28.

Income-tax authorities, namely Income-tax Officer, Assistant Commissioner, and Commissioner are competent to draw proceedings u/s 28 in course of any proceedings before them.

APPEAL AND POWER OF THE APPELLATE AUTHORITY.

An appeal u/s 30 lies against an order imposing penalty u/s 28 before the Assistant Commissioner. Similarly a second lies before the Commissioner against the order of the Assistant Commissioner hearing appeal against imposition of penalty by the Income-tax Officer.

But as a matter of practice, the Assistant Commissioner's order is very often challenged before the Commissioner by presenting a petition of review u/s 33. But no reference lies to the High Court against the order of the Commissioner imposing a penalty u/s 28—*In re : Jongibhagat Ramabatur v. Commissioner of Income-tax, B and O.*, 1930 Patna 121.

The Assistant Commissioner has no jurisdiction to enhance the amount of penalty in appeal, as such a jurisdiction is not contemplated by the Act and it amounts to an illegal assumption of authority not vested by law—*In the matter of Rai Sahib Harakrishna Das*, 132 I.C. 430. The Assistant Commis-

sioner is within his right in imposing penalty, while hearing appeal, if the return filed before the Income-tax Officer is found to be false—*In re : Pitta Ramaswamiah*, 49 M. 831.

NOTICE u/s 28.

The Central Board of Revenue has not prescribed any Standard Form of notice u/s 28. All that it requires is that the assessee must be given a reasonable opportunity to have his say. Thus a penal assessment is untenable where the assessee has not been heard or notice has not been served. The Taxing Authorities cannot do away with the formality of a notice. When a case comes under the purview of section 28, the following formalities are to be observed.

1. A formal notice is to be served,
2. Reasonable opportunity must be given to the assessee to represent his case.

PROSECUTION.

Where a penalty has been imposed, prosecution cannot be launched, but it can be launched for a different fact with the express approval of the Assistant Commissioner. There is no bar to impose penalty for one fact and prosecution for the other. The view that I take finds its support in the case of *Husanali & Co.*, 43 M. 498, where it is held : "perhaps the clearest way to put it is by an illustration. Suppose a man to have committed an offence u/s 39, by withholding his books and to have been prosecuted and convicted for it before he made a return of his income, as he clearly might be ; suppose that, subsequently he returns his income, at a figure found to be false ; could any one say that his conviction u/s 39 was a bar either to his being penally assessed or convicted u/s 200 I. P. C. .

29. When the Income-tax Officer has determined

Notice of demand. a sum to be payable by an assessee under section 23, or when an order has been passed under sub-section (2) of section 25 or section 28 for the payment of a penalty, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.

NOTICE OF DEMAND.

The notice of demand referred to in section 29 and prescribed in rule 20 draws a clear distinction between the cases where an appeal lies against an assessment and where an appeal does not lie, and shows the appropriate remedy to an aggrieved assessee in either case. This notice of demand should so far as possible contain the demand both on account of income-tax and

super tax, and since the total income has to be ascertained in every assessment for income-tax in order to determine the rate at which income-tax shall be payable on any income for which the assessee is responsible for direct payment, and as it is on the same total income that super-tax is leviable, it is desirable that, so far as possible, in the interest of economy and convenience to assesseees, the assessment both of income-tax and super-tax should be made simultaneously. (I. T. M. para 77).

DEMAND NOTICE.

Notice of demand must be served on the assessee in the manner prescribed under section 63. Usually demand notice is served where there has been an assessment, but there is no reason why it should not be issued in nil cases for an assessee in a nil case can have his grievances removed by an appeal. Executive instructions have been issued to furnish the assessee in nil cases with details of this assessment where he has income from business only. Where there is a perfectly good assessment order, the fact that a mistaken notice was sent to the assessee, in no way prevents a proper notice being sent when the mistake is discovered.

TIME LIMITS, IF ANY, FOR SERVICE.

No time limit has been specially mentioned in the section. In the case of *Rajendra Narayan Bhanjo*, reported in A. I. R. 1925 P. 581, Justice Dawson Miller observes: "The first thing to be observed is that no period within which such a notice demanding income-tax to be issued is prescribed in the Act and therefore *prima facie* a notice issued about 14 months after the expiration of the year of assessment would not necessarily be too late.....Although no time is prescribed for issuing the notice in question, I suppose, it may be said that such a notice must be issued within a reasonable time. What would be a reasonable time might vary according to circumstances... ..There is no period of limitation in the Act."

* * * * * But where a revised notice of demand is served, limitation will run from the order of revised assessment and not from the original notice of demand : (32 cal. 287).

30. (1) Any assessee objecting to the amount or rate at which he is assessed under section 23 or section 27, or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax Officer to register a firm under section 26A or to make a fresh assessment under section 27, or to any

Appeal against assessment under this Act.

order against him under sub-section (2) of section 25 or section 25A or section 28, made by an Income-tax Officer, may appeal to the Assistant Commissioner against the assessment or against such refusal order :

Provided that no appeal shall lie in respect of an assessment made under sub-section (4) of section 23, or under that sub-section read with section 27.

(2) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to or of the intimation of the refusal to register a firm under section 26A or of the date of the refusal to make a fresh assessment under section 27, as the case may be ; but the Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

APPEALS TO ASSISTANT COMMISSIONER.

Section 30 clearly specifies the cases in which an appeal lies to the Assistant Commissioner. An assessee may file appeal in the following cases :—

(1) Against an order refusing to reopen a case under section 27.

(2) Against orders of Income-tax Officers imposing penalty under section 25, clause 2 or section 28.

(3) Against any assessment under section 23(3).

(4) Against any order under section 25(A).

(5) Against any rate of assessment or against any order denying liability to be assessed under this Act.

(6) "Where the determination of the precise amount of loss sustained by an assessee in a particular year is material, for example, where the assessee is a firm and the amount of loss sustained by the firm affects the assessments of the partners or where the amount of depreciation can be carried forward and is affected, an appeal should be admitted under section 30 against the Income-tax Officer's decision as to the amount of loss, unless, of course, the case has been decided under section 23(4)."

An appeal under section 30 shall in the case of an appeal against refusal of an Income-tax Officer to make a fresh

assessment under section 27, be in form A, against an assessment under section 23(3) in form B. Forms of appeal against orders under section 25(2) and against section 28 shall be in forms C and D respectively. Rule 22 prescribes the form of appeal against an order of the Assistant Commissioner before the Commissioner under section 28 and it must be in form E. (*Specimens of forms have been shown under the head "Prescribed forms in appeal."*)

(7) Against an order refusing to register a Firm u/s 26 A.

PROCEDURE.

No specific rules have been laid down except under rule as mentioned in section 31. In fact the Assistant Commissioner on receiving an appeal usually calls for the records for the Income-tax Officer and fixes a date either at the head quarter or within the area where the assessee resides. The Assistant Commissioner is expected to select the time and place for the hearing with due regard to the convenience of the assessee.

LIMITATION.

(*Appeal to be presented ordinarily within 30 Days*)

As a matter of rule an appeal is to be presented within 30 days from the receipt of notice of demand. But the use of the word "ordinarily" goes to show that an appeal can be entertained after the expiry of 30 days. The law of limitation has been relaxed and practically an appeal is governed by section 5 of the Indian Limitation Act. But no second appeal or reference is permissible against the refusal by the Assistant Commissioner to entertain an application after the expiry of 30 days. "The word 'ordinarily' means that there is nothing to prevent the authorities from entertaining an appeal preferred after 30 days." *Mitchel v. Macneil & Co.*, 31 C. W. N. 630 : 130 I.C. 120.

DUTY OF THE ASSISTANT COMMISSIONER.

The law does not allow an appeal against an order under section 23(4), *In the matter of Mohonlal Hordeo Das*, 122 I.C. 810. But this does not mean that where an assessment has been made under a wrong sub-section no appeal lies. In the Full Bench case of *Duni Chand*, A.I.R. 1929 L. 593 ; 117 I.C. 69, it was held that "the mere fact that assessment purports to have been made under section 23(4) does not shut out appeal;" but persons assessed under section 23(4) cannot prefer an appeal on the ground that he is not liable to tax.

It is the duty of the Assistant Commissioner to satisfy himself that the proceedings of the Income-tax Officer were in order and the mere fact that he professes to act under section 23(4) would not be enough to prevent the Assistant Commi-

ssioner from satisfying himself that the Income-tax Officer's claim was correct : *In the matter of Radhakishen*, 101 I. C. 321.

APPEAL IN NIL CASES.

There is no bar for an assessee to prefer an appeal against any assessments made at nil, *i.e.* in case of faulty depreciation allowance, or overvaluation of house property income, etc., when the assessment has been made under section 23(3).

APPEALABLE ORDERS.

The following are the appealable orders, *i.e.* assessment under section 23(3), 25(2), 28, 25A, 26A, and in such cases when the assessee claims not to be liable under the Act of 1922.

In the case of *Pitta Rama Swamiah v. Commissioner of Income-tax, Madras*, reported in 49 Mad. 831, the High Court held that an appeal is competent.

REASONS IF TO BE STATED.

The Assistant Commissioner hearing appeal is not bound to set out reasons fully and the High Court cannot interfere when no reasons are recorded—*E. M. Chettyar Firm v. Commissioner of Income-tax*, A.I. R. 1930 Rang. 221.

NON-LIABILITY.

But persons assessed under section 23(4) are not entitled to appeal on the ground that they were not liable to be assessed under the Act : *In re : Dunichand*, A.I.R. 1929 L. 593 F.B. It was an appeal on the ground that he was not a resident of British India but it was dismissed as the assessment was made under section 23(4).

ASSISTANT COMMISSIONER—POWER IF LIMITED.

Assistant Commissioners have certain powers of hearing appeals as are specifically mentioned under section 31. In the case of *Jagannath Therani*, reported in 86 I. C. 777 : A.I.R. 1925, Pat. 405 Justice Ross observes : "The appellate authority has no power to travel beyond the subject-matter of the assessment and for all the reasons, advanced by the appellant, is, in my opinion not entitled to assess new sources of income. To do so would not in reality be enhancing the assessment but adding a new assessment to the old, the subject-matter being different, but the Assistant Commissioner has power to enhance an assessment made by the Income-tax Officer." In the case of *Rai Saheb Hara Kishna Das*, 132 I.C. 430 it has been held that the Assistant Commissioner has no authority in law to enhance the penalty while hearing appeal.

ASSESSMENT FOR TWO YEARS.

Where an appeal has been preferred against two years' assessment separate applications are to be filed. *In re : Nawal*

Kishore Khariatlal v. Commissioner of Income-tax, A.I.R. 1930 L. 1014.

COURT FEES.

The prescribed form must have a court fee stamp of eight annas for all appeals presented before the Assistant Commissioner.

PRESCRIBED FORM AND DULY VERIFIED.

The appeal must be in the prescribed form and must be duly verified. The Assistant Commissioner may reject an appeal *in limine* if not duly verified and in proper form.

POWER OF REGISTRATION AT APPELLATE STAGE.

An assessee can apply for registration even when preparing an appeal and when he can show that such application could not be made before I. T. O. for some tangible cause, the Assistant Commissioner can allow registration at that stage.

AD INTERIM APPEAL.

There is nothing in the Act to warrant the suggestion that a wrong order of an Income-tax Officer as a preliminary to his passing an order under section 23 of the Act may not be made a ground of appeal when appealing against the final order of assessment, unless a separate appeal or application for review, where no appeal is allowed, has been successfully filed against such order. As a matter of fact, the tendency of the Legislature has always been to prevent appeals against interim orders, leaving it open to the party aggrieved to challenge such order when appealing against the final order : *Bul Chand Keshob Das*, A.I.R. 1930 Sindh 301.

POWER OF REVIEW.

Assistant Commissioner has no power of review. He cannot review his own orders but is competent to rectify any mistake apparent from the record. He cannot make a re-assessment and initiate proceedings under section 34.

TIME FOR OBTAINING COPIES.

In appeals, where certified copies of orders are essential, the Income-tax Officer must calculate the period of limitation after allowing the days spent for obtaining such copies : *In Romanath Radhier*, 6 Rang. 175 and *Mohonlal Hardio Das*, A.I.R. 1930 Pat. 13.

But no ruling of the High Court is necessary that the computation of the period of limitation must be made after giving allowance to time spent for obtaining copies, in view of section 67A.

APPEAL HOW PRESENTED.

An assessee desirous of filing an appeal, must apply to the Income-tax Officer in the prescribed form. On receipt of the form the assessee must put a signature and verify the form duly. The appeal can be presented either by post or personally handing it over to the appellate authority. The assessee himself can file it or he can file it through his pleader and by his authorised representative.

APPEAL AGAINST AN ORDER REFUSING TO REOPEN THE CASE UNDER SECTION 27.

Section 30 clearly mentions that an appeal against such refusal is tenable. The proviso only lays down that no appeal lies against an order u/s 23(4) or that when an assessment u/s 23(4) has been reopened u/s 27, but at the time of denovo assessment, a fresh assessment has been made u/s 23(4) read with section 27—in such a case an assessee shall be debarred from appealing against that assessment—*A. K. A. C. T. V. V. Chettur v. Commr. of I. Tax.* 6 R. 652, 116 I. C. 47, A. I. R. 1929 R. 8.

The proviso specifically puts a bar to an assessment reopened u/s 27, but again assessed u/s 23(4). Thus a second appeal is not permissible, it is doubtful if a second petition u/s 27 can also stand.

If in appeals against an order refusing to reopen u/s 27, the Asst. Commr. upholds the order of the I. T. O., he is not bound to go into the merits of assessee's return—*In re : Pratap Ch. Ganguly*, A. I. R. 1932 Cal. 417.

The scope of appeal under this head is, that in an appeal against an order refusing to reopen the case u/s 27, the only question that arises is the same question of fact as that which fell to be determined by the I. T. O. u/s 27, and in such an appeal it is immaterial whether the assessment made u/s 23(4) is valid or not—*In re : Abdul Bari Chowdhary v. Commr. of I. T., Burma*, 5 I. T. C. 358, 133 I. C. 81 (relying on *A. K. R. P. L. A. Chettier Firm v. Commr. of I. Tax.*)

The only question arising in connection with an assessment u/s 23(4), which can come before the Asst. Commr. on appeal, is whether the I. T. O. was justified in refusing to cancel the assessment.

DENYING HIS LIABILITY TO BE ASSESSED.

The clause "denying his liability to be assessed" in section 30(1), is wide enough to cover the case of an assessee who denies his liability to be declared as an "Agent" under section 43. An appeal, therefore, against the order of an I. T. O. declaring any person to be an Agent of a foreigner, is not barred

under section 30(1)—*Gokuldas Chunilal v. Commr. of I. Tax*, A. I. R. 1932 N. 152.

Section 30, Income-tax Act contains no provision barring an appeal against the order of an Income-tax Officer declaring a person to be an agent of a foreigner.

APPEAL AGAINST AN ASSESSMENT u/s 23(4).

Section 30 of the Act specifically provides the appealable orders. When an assessment is made u/s 23(4), no appeal lies to the A. C.

But cases may be forthcoming, when it is found that the I. T. O. has made an assessment under a wrong sub-head (*viz.* an assessment has been made under section 23(4), which should have been made u/s 23(3)). It is a matter of common knowledge that an appeal is a matter of procedure—*Colonial Sugar Refining Co. v. Irving*, (1905) A. C. 365.

In the Full Bench decision in the case of *Dunichand*, A. I. R. 1929 L. 593, 117 I. C. 69, it has been held that the mere fact that the assessment purports to have been made u/s 23(4) does not shut out an appeal. In *In the matter of Radha Kissen*, 101 I. C. 321, it is stated that it is the duty of the Asst. Commr. to satisfy himself that the proceedings of the Income-tax Officer are in order and the mere fact that he professes to act u/s 23(4) is not enough to prevent the Asst. Commr. from satisfying himself that the findings of the Income-tax Officer are correct.

Before the Assistant Commissioner denies the right of appeal from an order under section 23(4), he must be satisfied that the assessee had really incurred the penalty sustained by law and that the Income-tax Officer has acted illegally in assessing him u/s 23(4). The mere fact that the assessment is under section 23(4) does not shut out appeal—*In re : K. Ananda v. Commissioner of Income-tax, B. & O.*, 5 I. T. C. 417, 12 P. L. T. 915.

It is said : “the law punishes a person who does not comply with a requisition by the Income-tax Officer by depriving him of his right of appeal. But the appellate authority must before denying him the right of appeal be satisfied that he had really incurred the penalty prescribed by the law, and that the Income-tax Officer had acted legally in assessing him under section 23(4) of the Act. The mere fact that the assessment purports to have been made under that sub-section does not shut out appeal, it must be shewn that the circumstances of the case bearing it within the scope of that sub-section. When the Assistant Commissioner is satisfied that the assessment was made, not ostensibly but genuinely under that sub-section, he must stay his hands and decline to adjudicate upon

the merits of the appeal on the ground that the proviso to section 30(1) bars an appeal in such a case."

Thus when an appeal is presented before the Assistant Commissioner against an assessment u/s 23(4), the Assistant Commissioner cannot refuse to entertain it—he has no power to reject it simply because it is an assessment u/s 23(4).

31. (1) The assistant Commssioner shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing.

(2) The Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer.

(3) In disposing of an appeal the Assistant Commissioner may, in the case of an order of assessment,—

(a) confirm, reduce, enhance or annul the assessment, or

(b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment,

or, in the case of an order refusing to register a firm under section 26A or to make a fresh assessment under section 27,

(c) *confirm such order, or cancel it and direct the Income-tax Officer to register the firm or to make a fresh assessment as the case may be ;*

or, in the cases of an order under sub-section (2) of section 25 or section 28,—

(d) confirm, cancel or vary such order :

Provided that the Assistant Commissioner shall not enhance an assessment unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

POWERS OF ASSISTANT COMMISSIONER IN DEALING WITH APPEALS.

The provisions of this section have been re-worded in order to make it clear that the Assistant Commissioner in entertaining an appeal has power to remand a case to the Income-tax Officer for report or disposal on its merits and also that the Assistant Commissioner is not required to pass orders on the actual date of hearing, but may pass orders after the last day of hearing.

An Assistant Commissioner in dealing with an appeal may enhance the assessment made by the Income-tax Officer, but under the proviso to sub-section (3) he must first give the appellant reasonable opportunity of showing cause against the enhancement. The appellant in such a case may under section 32 appeal to the Commissioner against the order of enhancement.

Appeals should never be simply dismissed for default of appearance,—they should always be decided on their merits, and a reasoned decision written whether the appellant appears or not. If the notice of hearing has not been served on the appellant in time to permit of his appearing in person or by pleader at the time and place fixed for the hearing of the appeal, the appeal should not be disposed of, but should be adjourned and a fresh notice issued to the appellant. (I. T. M., para 79).

ASSISTANT COMMISSIONER'S POWERS.

He can remand, confirm, reduce, enhance and annul assessment, but where it is enhanced reasonable opportunity should be given to the assessee. The Assistant Commissioner must state facts and give reasons for his finding and if he does not do so, he fails to perform his duty : *In the matter of Sukdeal*, 122 I. C. 238. He cannot enhance penalty while hearing appeal against imposition of penalty by the Income-tax Officer against an order u/s 28—*In re : Hara Krishna Das*, 132 I. C. 429.

POWER OF REVIEW.

The Assistant Commissioner has no power to review his own order, however erroneous it may be. The Commissioner has alone the power of review under section 33. Where a case has been decided *ex parte*, no petition can be entertained by the Assistant Commissioner for rehearing the case.

DISMISSAL FOR DEFAULT.

When an appeal is presented the Assistant Commissioner cannot dismiss it for default. The appeal must always be decided on merits. The Assistant Commissioner is competent

to entertain a petition if the appeal is decided *ex parte*, on any ground as mentioned under section 27. The Asst. Commr. should not dismiss appeal *ex parte*. He should hear the assessee or his counsel and then decide on merits. The Asst. Commr. should not merely scrutinise the memorandum of appeal and the assessment order of the I. T. O. behind the back of the assessee or his counsel and dismiss the appeal that it is not allowable—*In re : Bhagabatiprosad*, A. I. R. 1932 All. 390.

JURISDICTION OF ASSISTANT COMMISSIONER IN HEARING APPEAL.

As stated under section 30 in the case of *Jogannath Therani*, 86 I. C. 777, the Assistant Commissioner cannot assess a source of income which was not at all assessed by the Income-tax Officer. "Section 30 exists for the assessee's benefit and unless the statute expressly gives authority to the Assistant Commissioner, he cannot be said to possess the same jurisdiction as the original court. The right of appeal cannot be taken away by any Act of the Assistant Commissioner. Proceedings could have been taken under section 34 without impairing the right of appeal, but the Assistant Commissioners cannot usurp the powers of an original court under section 31." In an appeal against an order refusing to re-open u/s 27, the A. C. is not obliged to enter into the merits of the case.—*In re : Protap Ch. Ganguly*, 139 I. C. 93.

DEFECTIVE APPEAL.

A defective appeal not verified in the prescribed form and not bearing signature, can be rejected *in limine*. *In the matter of Damodar Prosad*, 120 I. C. 639.

RIGHT OF APPELLANT.

An appellant has no higher right in adducing fresh evidence in appeal than he would have in a Civil case under order 41, rule 27, Civil Procedure Code : *E. M. Chetty firm*, 122 I. C. 898, 7 Rangoon 635.

ORDER 41, RULE 27 OF THE CIVIL PROCEDURE CODE RUNS THUS :—

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary in the appellate Court. But if (a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted or (b) the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause, the appellate Court may allow such evidence or documents to be produced or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an appellate Court, the Court shall record the reason for its admission.

PLEA NOT TAKEN BEFORE I. T. O. CANNOT BE RAISED
IN APPEAL.

A plea raised for the first time in appeal cannot be entertained. The appellant has no higher title to raise a new point in appeal. He should have raised that objection before the Income-tax Officer. The appellant is estopped in asking the Asst. Commissioner in an appeal before him to go into a question, which should have been raised before and decided by the I. T. O., on an appeal against the assessment. This is opposed to the clear and unmistakable provisions of section 30 itself.

Justice Broadway in Karam Chand v. Commr. of Income-tax, Punjab 5 I. T. C. 315, 12 Lahore 714, A. I. R. 1931 Lahore 601, observes :—

“The objection which the petitioner made in his appeal to the Asst. Commissioner ought to have been taken by him before the Income-tax Officer u/s 25A of the Income-tax Act. Had such objection be taken, it would have been incumbent on the Income-tax Officer to make such enquiry as he thought fit and to pass an order under that section, if he found that the requirements of that section had been fulfilled. If the petitioner finds himself dis-satisfied with the order passed by the I. T. O. he could prefer an appeal against that order under the provisions of section 30(1) of the Act. What the petitioner claims to be entitled to do is to call upon the Asst. Commr. in an appeal to him to go into a question which should have been raised before and decided by the I. T. O., on an appeal against the assessment. This appears to me to be opposed to the clear and un-mistakable provisions of section 30 itself. I consider that the opinion of the Income-tax Commissioner is correct and that he has rightly held that the petitioner could not appeal to the Asst. Commissioner on the ground set out by him, inasmuch as no objection u/s 25A had been made, and that the Asst. Commr. was right in refusing to go into the matter and further, in my opinion, the provisions of section 30(1) barred the Asst. Commissioner in entertaining the plea”.

In the case of *Biradhlmal Lodh v. Commissioner of Income-tax*, A.I.R. 1931 All. 217, the appellant assessee raised a plea of division of the Hindu undivided family before the Assistant Commissioner on appeal, but it was refused.

All that section 25A provides is that a claim which comes under that section should be made at the time of making an

assessment and necessarily it must be put forward before the Income-tax Officer in charge of assessment.

Under the Civil Procedure Code, it is not open to the party on appeal to advance a claim for relief on a ground which he has not taken in his plaint and even as regards the production of additional or new evidence, order 41, Rule 27 lays down that additional evidence can only be admitted in appeal when such evidence is required by the Appellate Court itself in order to enable it to pronounce a judgment or when such evidence has been refused by the Court of the first instance. If the Civil Courts are so stringent in regard to this rule that new matter should not be raised for the first time in appeal, why should it be laid down that appeals under the Income-tax Act should be conducted with greater laxity.

But Justice Niamatulla attached a dissenting judgment and he observes:—

I may note that no analogy can be drawn from Order 41, Rule 27 of the Civil Procedure Code, to determine the powers of the Assistant Commissioner hearing an appeal u/s 31(2) as the latter gives unrestricted discretion to the Assistant Commissioner to make further inquiry, that is, to obtain more evidence throwing light on the question which he is called upon to decide, while Order 41, Rule 27, confers very limited powers upon a Court of appeal in the matter of admitting fresh evidence.

ORDER UNDER SECTION 31.

An order of the Assistant Commissioner rejecting an appeal against an assessment under section 23(4), although not maintainable is still an order under section 31—*In re: K. Ananda v. Commissioner of Income-tax B. & O*, 5 I. T. C. 417. This overrules the case of *Pallu Mul Bholanath*, 146 I. C. 759.

If an appeal, purporting to be an appeal u/s 30 is filed against an assessment purporting to have been made under sub-section (4) of section 23, it is not within the competence of the Assistant Commissioner to make an *ex parte* order declining to entertain the appeal on the ground that by reason of the proviso to sub-section (1) of section 30, no appeal lies. The appeal must be formally heard in accordance with sub-section (1) of section 31 and a finding recorded on the preliminary issue whether the appeal lies. The decision on this preliminary issue will depend on whether the assessment expressed to have been made under sub-section (4) of section 23 was in fact capable of being made under that sub-section. If the decision on this issue is adverse to the appellant, the appeal will be dismissed on the ground that no appeal lies. An order dismissing the appeal on this ground is an order under section 31—Executive Instructions.

APPEAL AGAINST AN ORDER IMPOSING PENALTY u/s 28—
IF CAN BE ENHANCED.

It can be stated as a matter of general principle that a penalty is not, as a rule, to be enhanced in appeal by mere implication of language. Asst. commr., has no authority in law to enhance the penalty while hearing an appeal against imposition of penalty.

In Hara Krishna Das 5 I. T. C. 277, 132 I. C. 429, the Allahabad High Court decision is worth quoting.

"We find that section 31 is not oblivious of the fact that there is the word enhance or enhancement in the English language and does not fail to use it when the idea was that the assessment should be enhanced. If we see that the legislature has not used the word enhance or enhancement dealing with a case of penalty, we can easily say that some different intention was intended to be conveyed. It is true that the word "vary" has been used in conjunction with the word "order" in clause (d) of sub-section (3) of section 31. But the idea could have been easily expressed by altering the sentence and using the unambiguous word "enhance" with respect to penalty. The fact that no provision was made for hearing the assessee before enhancing the penalty is a clear argument in support of the contention of the counsel of the assessee. The fact again that a further appeal is provided for in the case of an enhancement of penalty is another argument against the view that a penalty could be enhanced.

.....We notice that no provision is to be found within the four corners of the Indian Income-tax Act by which the Department may ask by way of an appeal, any authority to enhance a penalty which has been imposed by the I. T. O. This shows that if the assessee decides not to file an appeal against an order imposing penalty, the Department cannot seek to have the penalty enhanced."

32. (1) Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or to an order enhancing his assessment under sub-section (3) of section 31, may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order.

(2) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner.

(3) In disposing of the appeal the Commissioner

may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

APPEAL TO COMMISSIONER.

No second appeal lies from orders passed by an Income-tax Officer. Right of second appeal is confined to two matters only namely (1) against an order passed under section 28 by the Assistant Commissioner and (2) against an order of enhancement. In no other cases second appeal lies.

ENHANCEMENT UNDER ONE HEAD, BUT REDUCTION UNDER DIFFERENT HEADS BY ASST. COMM., TOTAL INCOME REMAINING THE SAME—IF APPEALABLE.

When the Asst. Commr., enhances the income under one head but reduces the income under different heads, with the result that the total income as worked out by the I. T. O., remains the same, the order of the Assistant Commissioner is not an order enhancing the assessment within section 32(1) and no appeal lies to Commr. against such an order. The enhancement referred to in sections 31(3) and 32(1) is an enhancement of the assessment as a whole. Income-tax is one tax and not a collection of taxes on different items of income—*In re : T. Nambammal Chetty & Sons*, 1933 I. T. R. 32 ; A. I. R. 1933 M. I.

LIMITATION.

The law allows thirty days' time from the date of any order under the section. The period required for obtaining copies must be excluded in computing the period of limitation, so far as an appeal under section 30 or 32 is concerned.

FORMS OF APPEAL.

Rule 22 prescribes the form of appeal under section 32 which must be in form E. It must be duly verified and be presented within the period of limitation.

WHETHER COMMISSIONER HAS POWER OF REVIEW AGAINST AN ORDER UNDER SEC. 32.

The Commissioner has no right to entertain a petition under section 33 against an order passed by him under section 32. All that an assessee can do is to ask the commissioner to state a case for reference to the High Court in view of the fact that a reference to the High Court can only lie when there is an appeal under section 31 or 32.

33. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any authority subordinate to him or by himself when

Power of review.

exercising the power of an Assistant Commissioner under sub-section (4) of section 5.

(2) On receipt of the record the Commissioner may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit :

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard.

POWER OF REVISION.

The period within which an I. T. O. may assess income that has escaped assessment is restricted by section 34 and the time within which an I. T. O., Assistant Commissioner or commr. of I. Tax may correct a mistake apparent on the face of the record by section 35. The commissioner acting under section 33 cannot extend this period of limitation though he can revise, after it has expired, action validly taken within it. If a commissioner of I. Tax desires to exercise his power of revision in any case when more than a year has elapsed since the passing of the last order by the subordinate authority he should not do so without first consulting the C. B. R.

Where in consequence of any appellate or revisional order, or any decision of a High Court on a reference, the assessment of a firm is modified in a manner entitling any partner to a reduction of the tax imposed on him individually and for any reason such relief cannot be given by the Assistant Commissioner in the exercise of his appellate powers, the Commissioner of Income-tax should make the reduction under section 33, regardless of one year's period of limitation.

The commissioner need not necessarily make a personal enquiry but may cause an enquiry to be made by a subordinate officer.

The power conferred by this section on a Commissioner can only be exercised once in any particular case. A commissioner who has once "declined to interfere" under this section is debarred from subsequent action under that section just as he would be if he had passed an order modifying the assessment.

An order under section 33 merely declining to interfere is not an order "Prejudicial to the assessee." A commissioner is therefore not bound to hear an assessee or his representative, before rejecting a revision petition. The Act, of course does not contemplate such petitions.

POWER OF COMMISSIONER UNDER SEC. 33.

The Commissioner may of his own motion or from an application by an assessee, call for the records and decide any question of law or facts involved therein. Under section 33 the Commissioner is within his rights to decide any question of fact as well.

LIMITATION.

As a matter of fact there is no specific provision relating to limitation under section 33. By executive instructions it has been decided that Commissioner must not entertain a petition under section 33 in any case where more than a year has elapsed since the passing of the last order by the subordinate authority.

The Commissioner's powers under this section are subject to limitation imposed by section 35; *In the matter of Ganesh Das of Amritsar*, 100 I. C. 675 : 8 L. 354. For the purpose of re-assessment, proceeding under section 33 is subject to section 34; 108 I. C. 73 : A. I. R. 1928 Mad. 253. Power of Commissioner should be exercised within reasonable time as has been observed in the case of *Abdul Kadir Marakayar & Co.*, A. I. R. 1928 Mad. 257. The order of the Commissioner cancelling the order of the I. T. O, directing the registration of the firm more than a year after the order was made, is invalid. The words "subject to the provision of this Act" indicate that the commr.'s powers u. s 33 of the Act are subject to the time limit of one year mentioned in sections 34 and 35 (*in re : Yesa Ram* A. I. R. 1927 L. 248, *In re : Ganesh Das* 8 L. 354)—*Firm of Khemchand Ramdas v. Commr. of I. Tax*, A. I. R. 1934 S. 46.

POWER OF REVISION.

The Commissioner has power of revision of any proceeding. He can revise any order of officers subordinate to him. He can revise his own orders, if any, passed by him in his capacity as an Assistant Commissioner; but this does not empower him to review his own orders under section 33 : *In the matter of Satchidananda Singha*, 88 I. C. 1014.

Though the power under section 33 is called the power of review in the marginal note to the section, the real jurisdiction given under this section is not by way of review but by way of revision or superintendence and such power is not more large than the power of a court of appeal; *Abdul Kadir Marakayar*, 108 I. C. 73 : A. I. R. 1928 Mad. 257.

REASONABLE OPPORTUNITY.

It is a question of fact that where the Commissioner exercises the power of an original court, he must allow sufficient

opportunity to the assessee as laid down in the case of *Satchidananda Singh*, A. I. R. 1929 Pat. 644.

RES JUDICATA.

Decision in income-tax cases do not operate as estoppel or *res judicata*. Income-tax authorities are not guided by strict judicial principles and they have sometime to depend upon material which would be wholly inadmissible in a court of law. But it has been said that Income-tax authorities must proceed in a judicial manner. Fundamentally they must proceed in a judicial spirit and come to a judicial decision. In the case of *Harmuk Roy Dulichand*, 56 Cal. 39 and also in the case of *Sankar Linga and other* A. I. R. 1930 Mad. 209, it was observed that the doctrine of *res judicata* does not apply to income-tax cases. Attention is also drawn to the case of *Massey & Co. Ltd.* 115 I. C. 814.

DECISION OF BOARD OF REFEREES.

The decision of a Board of Referees under section 33-A is not subject to appeal to any Income-tax authority and cannot be revised by the commissioner in exercise of his powers under section 33.

REFERENCE TO THE HIGH COURT.

Before the present Amendment (Second Amendment Act, 1933, Act XVIII of 1933), there was no provision in the Act itself allowing a right of reference to High Courts against an order passed under section 33. There are conflicting decisions under the previous Act.

In *Sinseng Hin*, 102 I. C. 785, A. I. R. 1925 R. 252, it has been held that as section 66(3) permits an assessee to move the High Court in the case of an application under sub-section (2) of section 66 and as section 33 is not mentioned in section 66(2) the assessee has no right to require a reference without an express provision conferring on him that right.

The Calcutta High Court in the case of *Sanat Kumar Roy*, 30 C. W. N. 831, has held that "The Indian Income-tax Act makes no provision by which the High Court can compel the Commissioner to state a case to the High Court, when a question of law arises in a review proceedings before the Commissioner—Calcutta and Rangoon High Courts are of the same opinion.

The Madras High Court in the case of *Abdul Kadir Marakayar*, 49 Mad. 725, has held that "the High Court has power to order the Commissioner to state a case embodying any point of law that may arise in the course of a proceeding u.s. 33 of the Act of 1922. The power of High Court was not meant to be confined to cases under sections 31 and 32 of the Act and

is not by implication taken away in the case of order under section 33".

The Patna High Court in the case of *Suraj mal Brij lal* 1930 Pat. 538 was of opinion that as orders of an Assistant Commissioner under-section 31 and order of a Commissioner u/s 32, were subject to the provisions of section 66(2) and (3), it does not stand to reason why order under-section 33, should not be subject to the same provision—Madras and Patna think alike.

But all complications have been set at rest and assessee has been given the right to require the Commissioner to refer to the High Court any question of law arising out of an order under section 33, enhancing the assessment or otherwise prejudicial to him. A proviso has also been added in section 66 to the effect that a reference shall lie from an order under section 33 only on a question of law arising out of that order itself.

An order under section 33 merely declining to interfere is not an order "prejudicial to the assessee".

REFERENCE TO HIGH COURT IF LIES.

There is no provision in the Act itself stating that a reference lies to the High Court under section 33. In the case of *Sinseng Hin*, 102 I. C. 785: A. I. R. 925 Rang. 252, it has been held that as section 66(3) only permits an assessee to move the High Court in the case of an application under sub-section (2) of section 66 and as section 33 is not mentioned in section 66(2), the assessee has no right to require a reference or move the High Court to compel a reference without an express provision conferring on him that right. But in the case of *Abdul Kadir Marakayar & Co.*, 49 Mad. 725 it was held that "the High Court has power to order the Commissioner to state a case embodying any point of law that may arise in the course of proceeding under section 33 of the Act of 1922. The power of High Court was not meant to be confined to cases under sections 31 and 32 of the Act and is not by implication taken away in the case of order under section 33." But the Calcutta High Court in the case of *Kumar Sanat Kumar Roy* 30 C. W. N. 831, held that, "The Income-tax Act makes no provision by which the High Court can compel the Commissioner to state a case to the High Court where a question of law arises in a review proceedings before the Commissioner". (See *infra*).

SECTION 33 IF APPLICABLE WHERE ASSESSMENT MADE UNDER SECTION 33(4).

Law as it stands an appeal is not permissible against an assessment under section 23(4) but there is no bar to entertain

a petition of review under section 33 in cases coming under section 23(4). This is no appeal but is a power of revision or superintendence. *P. K. N. P. R. Chetyar firm*, 8 Rang. 203. The Commissioner cannot turn down an application u/s 33, when the assessee files a petition of review u/s 33 without exhausting the other privileges enjoined under the Act.

NOTICE UNDER SECTION 34.

The Commissioner has no right to initiate any proceeding under section 34.

COMMISSIONER'S POWER TO EXERCISE DISCRETION IN CASE OF ARBITRARY ASSESSMENT.

As a matter of fact the Commissioner has inherent power to interfere in any assessment proceeding where it appears to him that the subordinate authorities have proceeded arbitrarily and capriciously. In the case of *P. K. N. P. R. Chetyar firm*, A. I. R. 1930 Rang. 33, it was held that an assessment which should have been made to the best of the Income-tax Officer's judgment but which does not even purport to be based upon material which were admittedly available or on any material at all, being on the Income-tax Officer's whims or humour, can hardly be regarded as an assessment, in respect of which the Commissioner ought to have exercised the discretion given to him by section 33. In the case of *Mahamad Hayat Haxi Mahamad Sardar*, 131 I. C. 931, it was held that an Income-tax Officer would perpetrate an injustice if he took advantage of default and assessed the income at a fanciful and imaginary figure without any justification, the Commissioner is within his right to interfere and exercise his discretion. "An assessment resting upon the whim and caprice of the Income-tax Officer cannot be elevated to the dignity of an assessment made to the best of his judgment."

REVIEW PENDING APPLICATION FOR REFERENCE.

During the pendency of an application under section 66(2) the Commissioner can exercise his power of review under section 33. *In the matter of C. T. V. S. Chetyar firm*, 122 I. C. 902 : A. I. R. 1929 Rang. 248.

COURT FEES.

Whenever an application under section 33 is filed the assessee is not required to affix any court fee stamp on the petition itself. In appeal before the Assistant Commissioner the law enjoins that a court fee of eight annas must be affixed on the memorandum of appeal but no such court fees are necessary in filing a petition under section 33.

PROCEDURE.

As soon as a petition under section 33 is filed the Commissioner may call for the certified copy of the order complained against and he may call for the records of the subordinate authorities. It is not incumbent on the Commissioner to hear the assessee or his representatives; he may dispose of the application on merits but where the Commissioner wants to have the assessment enhanced, sufficient opportunities should be given to the assessee.

33A. (1) Any person aggrieved by an order of Reference to Board an Income-tax Officer under sub-section (1) or sub-section (2) of section 23A may, within thirty days of the date on which he was served with notice of such order, lodge an appeal in the office of the Commissioner.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) The Commissioner shall refer such appeal, with a statement of his own opinion thereon, to a Board of Referees for decision; and the Board of Referees shall decide the appeal after hearing the appellant and any person deputed by the Commissioner:

Provided that, before making a reference to a Board of Referees, the Commissioner may, and at the request of the appellant shall, in exercise of his powers of revision under section 33, decide the matters in dispute and thereupon the assessee may withdraw his appeal or proceed with it.

(4) The decision of the Board of Referees shall be forwarded to the Commissioner who shall transmit it to the Income-tax Officer who passed the original order, and shall also send copies to each Income-tax Officer who has made any assessment consequent upon such order; and where a decision reverses or modifies the order of the Income-tax Officer, fresh assessments shall be made in accordance therewith, or such consequential adjustments as may be required shall be made in any assessment already made.

(5) The decision of a Board of Referees shall not be subject to appeal to any Income-tax authority,

and shall not be revised by the Commissioner in exercise of his powers under section 33.

(6) A Board of Referees shall consist of not less than three and not more than five persons, of whom not less than one-half shall be non-officials having business experience and one shall be a judicial officer not inferior in rank to a Subordinate Judge or a Judge of a Small Cause Court who has held judicial office for a period of not less than ten years.

(7) Subject to the provisions of sub-section (6), the Central Board of Revenue may make rules regulating the formation, composition and procedure of Boards of Referees.

NOTES AND PROCEDURE.

Section 23A has been newly inserted and an appeal is maintainable against an order under that section. The appeal is to be lodged before the Commissioner for reference to a Board of Referees which will be composed of either three or five members of which half the members shall be non-officials having business experience, one at least from the judicial department not below the rank of a Subordinate Judge or Small Cause Court Judge of 10 years' standing. No time is prescribed in section 33A(3) within which the Commissioner should refer an appeal to a Board of Referees. It should however, be done expeditiously e, g. within 60 days from receipt of the appeal.

LIMITATION.

An appeal under this section must be presented within thirty days from the day of service of notice of order. This time cannot be extended on any ground.

REFERENCE TO HIGH COURT.

Under section 66(2) any assessee can ask the Commissioner to refer to the High Court any question of law against the decision of any Board of Referees.

APPEAL.

When an assessee is aggrieved with the decision of the Income-tax Officer under section 23A, he may prefer an appeal within 30 days from the date of service of notice of order to the Commissioner in the prescribed form with a court fee stamp of eight annas. But before reference to the Board the assessee may ask the commissioner to decide the case under section 33 and if the assessee is satisfied with the decision, the reference to the Board must be withdrawn. But if the assessee remains

aggrieved he may ask the commissioner to refer the case to the Board of Referees.

RULES UNDER SECTION 33-A.

Notification No. 35, dated the 12th. July, 1930.

RULES.

1. The Commissioner of Income-tax on receipt of an appeal u/s 33A of the Indian Income-tax Act, 1922, shall, unless in pursuance of the proviso to sub-section (3) of that section, the appeal is withdrawn, appoint a Board of Referees consisting of not less than three and not more than five members chosen by him, subject to the provisions of sub-section (6) of that section, from a panel constituted by the Central Board of Revenue.

2. Appointments to, and resignations or removals from the panel, shall be published in the Gazette of India.

3. The names of the members chosen by the commissioner shall be communicated to the appellant within one week of receipt of the appeal in the commissioner's office or of the decision of the Commissioner u/s 33 as the case may be.

4. Within a period of 15 days from the receipt of the communication, the appellant may object, without giving any reasons, to the inclusion of any name or names in the Board, and submit the names of not less than 5 members of the panel to whom he will not object.

5. In the event of any objection to any name, the Commissioner shall substitute a fresh name therefor, but shall not be bound to accept a name submitted by the appellant and shall communicate forthwith to the appellant.

6. The appellant may not subsequently object to the inclusion in the Board of any name submitted by himself.

7. The appellant shall be allowed one further period of 15 days in which to object to names not originally included by the commissioner non-submitted by himself.

8. If the applicant has twice objected to the constitution of the Board proposed by the commissioner the Central Board of Revenue shall settle the composition of the Board and the decision of the Central Board of Revenue shall be final.

9. The time and place of the first meeting of the Board shall be fixed by the Commissioner after consulting the members. The time and place of subsequent meetings shall be fixed by the Board and announced to the appellant and the commissioner.

10. The members of the Board shall elect their own chairman.

11. The decision of the Board shall be the decision of the majority of members present. All the members present shall sign the report, and any member who differs from the others may record a dissenting minute. Should there be an equality of votes, the chairman shall have a casting vote. No decision of the Board which is signed by less than half the members shall be valid. The proceedings of the Board shall not be invalidated merely by reason of the absence of a member or his failure to sign the report of the Board.

PREScribed FORM.

Rule 22A has prescribed form F against an order passed under section 23A and form G against an order under section 23A(2).

34. If for any reason income, profits or gains chargeable to income-tax has escaped assessment in any year or has been assessed at too low a rate, the Income-tax Officer may, at any time within one year or the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be.

ASSESSMENT OF INCOME WHICH HAS ESCAPED ASSESSMENT.

Section 34 gives wide power to the Income-tax Officer who can re-open an assessment on two grounds only (1) where income chargeable to income-tax has escaped assessment (2) where tax has been levied at too low a rate. All that the law requires is that the Income-tax Officer should commence the proceedings within the statutory period of one year : but it is not necessary that proceedings should be completed within that period.

“ESCAPED ASSESSMENT”—MEANING OF.

So long as the proceedings for assessment are pending and

have not ended in a final assessment, income cannot be said to have escaped assessment; so when the original proceedings are revived after certain nugatory proceedings, assessment can be made even after expiry of one year from notice: *In the matter of Lachhiram Basanta Lal Nathani*, 35 C. W. N. 310: 58 C. 909: A. I. R. 1931, Cal. 545.

Section 34 is applicable to cases in which either no assessment at all has been made on the person who received the income, profits or gains liable to assessment or when assessment has been made in the course of the year, but some portion of the income, profits or gains of such assessee for some reason or other has not been included in the order of assessment—*In re : N. N. Burjorjee*, A. I. R. 1931 R. 101: 131 I. C. 507.

APPLICABILITY OF SEC. 28 IN SEC. 24 PROCEEDINGS.

Sec. 34 shows that proceedings taken under it follow the routine laid down in Chap. IV for the original assessment of income to income-tax, and that Sec. 28, which is a part of that procedure, will also apply to the re-assessment proceedings under section 34. It is not necessary that an order of assessment should be made first before issuing notice to the assessee as to why a penalty should not be imposed on him: *In re : Gurucharan Prasad Khatri* A. I. R. 1931 All. 421.

EXECUTIVE INSTRUCTIONS.

"If it appears at any stage of the proceedings that no income has escaped assessment or has been assessed at too low a rate, the Income-tax Officer must promptly stop the proceedings. It is not intended that when a man has concealed part of his income and the Income-tax Officer is proceeding to assess the income that has escaped assessment, the assessee should be entitled to have the assessment, that has already become final, re-opened. Still less it is intended that the Income-tax Officer should be vested with wide power of revision or review merely because he has formed a mistaken impression that certain income has escaped assessment or has been assessed at too low a rate. His power under section 34 can never be used, therefore, to effect a reduction of tax already levied.

"Where income that escaped assessment or was assessed at too low a rate is subsequently assessed or fully assessed the proviso to section 34 makes it clear that the rate applicable to such assessment or re-assessment is the rate in force at the time when the income should originally have been so assessed."

ASSESSMENT OF INCOME WHICH HAS ESCAPED ASSESSMENT.

Section 34 of the Act gives wide power to the Income-tax Officer to initiate proceedings mainly on two grounds, *e.g.*

1. Where income, profits or gains chargeable to income-tax, has escaped assessment, either partially or totally, and
2. Where income-tax has been levied at too low a rate.

All that the law requires is that the Income-tax officer should commence the proceedings within the statutory period of one year; it is not essential to complete the assessment or reassessment within the period.

ESCAPED ASSESSMENT—MEANING OF.

So long the proceedings for assessment are pending and have not ended in a final assessment, income cannot be said to have escaped assessment; so when original proceedings are revived after certain nugatory proceedings, assessment can be made even after expiry of one year from notice—*In the matter of Lachiram, Basantilal Nathani*, 35 C. W. N. 310=58 Cal. 909=A. I. R. 1931, Cal. 545.

Escaped assessment includes cases in which either no assessment at all has been made on the person who received the income, profits or gains liable to income-tax, or when assessment has been made in the course of the year, but some portion of the income, profits or gains of such person has not been included in the order of assessment, such income is income which has escaped assessment within the meaning of section 34: *Commissioner of Income-tax v. N. N. Burjorjee*, A. I. R. 1931 R. 101 : 131 I. C. 507.

The Madras High Court in the case of *Commissioner of Income-tax, Madras v. K. C. Gajapati Narayan Deo* 91 I. C. 940, went further and was of opinion that the expression "escaped assessment" in section 34 is applicable to cases where the Income-tax Officer has deliberately adopted an erroneous construction of the Act, just as much to a case where the officer had not considered the matter at all, but simply omitted the assessable items from its view and from his assessment. There is nothing in the statute to prevent the assessing Officer from recovering in the succeeding year Income-tax from the previous year under section 34, which must be retrospective in operation.

"Escaped assessment" also covers a case where income has been assessed in the hands of a person to whom it does not really belong *In re: Ganesh Das* 100 I. C. 675. Section 34 is also applicable to cases where escaped income is part of the income under one head or derived from any other different head—*Bulaki Saha v. Crown*, 1 I. T. C. 256.

IS SECTION 34 APPLICABLE, WHERE THE I. T. C. TOOK A WRONG VIEW OF THE CASE ?

We are confronted with several conflicting decisions. The

Madras High Court in the case of *K. C. Gojopati Narayan Deo, Raja of Parlakamedi*, 49 M. 22, is clearly of opinion that section 34 is applicable to cases where the Income-tax Officer has deliberately adopted an erroneous construction of the Act, just as much to a case where the officer had not considered the matter at all.

"It is said that escaped assessment must mean not that the question has been considered and decided in favour of the assessee, but that the Income-tax Officer has omitted to consider the question at all or was unaware of the existence of the property now sought to be taxed and therefore passed it over and that it does not apply to cases where the Income-tax officer on consideration came to the conclusion, *ex hypothesi* an erroneous conclusion, that the property in question, was not assessable. It seems to me that construction is forbidden by the alternative case put in the section :

"Where the income.....has been assessed at too low a rate."

That cannot be a matter of mere inadvertance, that must refer to a deliberate assessment, made by the Income-tax Officer in the preceding year with knowledge of the facts and circumstances. It appears to me that a similar view must be taken of the previous words "escaped assessment" and that it applies to cases where the Income-tax Officer has deliberately adopted an erroneous construction of the Act just as much to a case where the officer has not considered the matter at all, but simply omitted the assessable property from his view and from his assessment. *Commissioner of Income-tax Madras v. Raja of Parlakamedi*, 49 M. 22 : 91 I. C. 940.

The Calcutta High Court in the case of *Messrs. Anglo-persian Oil Co. Ltd. v. Commr. of Income-tax, Bengal*, 37 C.W. N. 777—A. I. R. 1933 Cal.777, practically endorsed and opined with the Madras decision. Chief Justice Rankin observes : "I see no way of holding that section 34 is inapplicable to put right an assessment by which a deduction has been improperly allowed. Such a case is in my opinion a case of income escaping assessment—not the whole income of the assessee but a part of it escaping assesment, and there is nothing in section 34 which limits it to cases of nondisclosure by the assessee or discovery of new matter by the income-tax authorities or inadvertance as distinguished from erroneous deliberations on the part of these authorities. In most cases of under-assessment of profits, it could be said that the whole profits were assessed at a certain figure but when that figure is shown to be less than the amount of assessable profit, the balance has in my opinion "escaped assessment"; within the meaning of these words as they appear in section 34. We have been

referred to the Madras decision in *Raja of Parlkamedī's* case, 49M. 22, from which I see no reason to differ and to the English case of *Andarton and Halstead v. Birrel*, K. B. 271, which does not seem to afford any assistance upon the construction of the Indian Act."

But the Lahore High Court in the case of *Kishen Kishore v. Commrs. of Income-tax, Lahore*, A.I.R. 1933, L. 284, held that section 34 is not applicable to put right an assessment where the I.T.O. improperly allowed deductions. Justice Tailal observes: "the expression 'escape' in my opinion as used in the section connotes failure by the taxing authority to tax the income owing to accidental or deliberate omission by the assessee to declare it or to some similar circumstances. It does not however include cases where the income is known or disclosed to the Income-tax Authorities and has been the subject of assessment."

Their Lordships of the Privy Council in the case of *Sir R. N. Mukherjee v. Commr. of Income-tax, Bengal*, 1 I.T.L.R. 19 also arrived at a similar finding. Income which has already been duly returned for assessment cannot be said to have escaped assessment within the meaning of section 34, although such income was erroneously included in the assessment of another assessee and consequently not assessed within the tax year in respect of the proper assessee. Income has not escaped assessment if there are pending at the time, proceedings for the assessment of the assessee's income, which has not yet terminated in a final assessment thereof.

The word "assessment" as used in the Indian Income-Tax Act is not confined to the definite act of making an order of assessment and "has escaped assessment" in section 34 is not equivalent to "has not been assessed." The fact that section 34 requires a notice to be served calling for a return of income which has escaped assessment strongly suggests that income which has already been duly returned for assessment cannot be said to have "escaped" assessment within the statutory meaning. (*Vide* also *Lachiram Basantlal v. Commr. of Income-tax, Bengal*, 5, I.T. R. 114.

In my opinion section 34 is not applicable to put right an assessment when deduction has been improperly allowed, because there is a fundamental difference between a re-assessment under section 34 and revision. The Income-tax Officer has got no revisional jurisdiction and as such when he took an erroneous construction of the Act, section 34 is inapplicable, because the Income-tax Act does not confer any revisional jurisdiction on the Income-tax Officer and this is why their Lordships of the Privy Council held that "has

escaped assessment" does not or cannot mean "has not been assessed."

SECTION 34 IF APPLICABLE TO ASSESSMENT ON ESTIMATE UNDER SECTION 13.

To me it seems that when an assessment is made under section 23(3) read with section 13, section 34 is inapplicable even if the estimate is found to be low *e.g.* where in an original assessment a net profit of Rs. 2/- per annum was taken and assessed accordingly, the Income-tax Officer cannot initiate proceeding under section 34 even if he finds that the assessee made a greater profit and the estimate should have been more. Section 34 is inapplicable to cases which involve exercise of revisional jurisdiction: *Commissioner of Income-tax, Burma v. U. Lunyo*, A.I.R. 1933 R. 350 : 146 I.C. 300. A succeeding Income-tax Officer cannot set aside the previous assessment order of his predecessor simply on the ground that the previous estimate was too low. Disagreement with the predecessor's finding as to the amount of assessable income does not justify revision of such assessment.

ASSESSMENT UNDER SECTION 23(4), IF SECTION 34 APPLIES.

The idea that since a summary assessment under section 23(4) is a penal one, re-assessment under section 34 should not be enforced, is erroneous inasmuch as, the Income-tax Officer is competent to issue notice under section 34 and re-assess in such cases. Section 34 is operative in all assessment under section 23, *In the matter of Kedar Nath Kesriwal*, 34 C.W.N. 1093. Similar views were expressed in the case of *Monohar Lal Deo Karandas* 108 I.C. 436, where it was held that a succeeding Income-tax Officer can start proceeding under section 34, even if the original assessment made by his predecessor was under section 23(4). In the case of *Choteylal* A.I.R. 1932 All. 83, relying on the case of *Kasinath Bagla* A.I.R. 1932 All. 1, it was held that it is open to the Income-tax Officer to reopen the assessment originally made under section 23(4) when proceedings under section 34 have been started, nor does such fresh notice do away with the previous assessment under section 23(4). It is competent to the Income-tax officer to make a reassessment under section 23(4). An additional Income-tax officer can assess under section 34, provided he has jurisdiction under section 5 of the Act, *Hazi Taj Mahamud Hazi Abdul Rahaman & Co. v. Commissioner of Income-tax, U. P.*, 6 I. T. C. 240.

PENALTY UNDER SECTION 28 IF LEVIABLE IN PROCEEDINGS UNDER SECTION 34.

So long as a matter of practice penalty under section 28 was levied in section 34 proceedings. The decision in the case of

Gurucharan Prosad Khetry 131 I. C. 875, was also to the effect that penalty could be levied. Section 28 is not merely intended by the Act to apply to an assessment under the preceding sections but it may refer to any proceeding whatever under the Income tax Act. Now section 34 is a section which lays down proceedings under the Income-tax Act and accordingly proceedings under section 34 are proceedings in the course of which penalty under section 28 can be imposed.

Further section 34 itself states that under that section there may be a notice under subsection 2 of section 22 "and the provisions of this Act shall so far as may be, apply accordingly as if the notice were a notice issued under that subsection".

Thus section 34 shows that proceedings taken under it follow the routine laid down in chapter IV for the original assessment of income to income-tax and that section 28 which is a part of that procedure will also apply to re-assessment proceedings under section 34. It is not necessary that an order of assessment should be made first before issuing notice to the assessee as to why a penalty should not be imposed on him.

The Allahabad High Court in the case of *Mayaram Durgaprosad* 5 I. T. C. 130, has definitely held that section 28 is inapplicable to a proceeding under section 34. The ingredients which go to make up the condition to the infliction of a penalty are :

1. The Income-tax Officer in the course of a proceeding, must be satisfied that an assessee has deliberately furnished inaccurate particulars of his income and has thereby returned it below the real amount.
2. There must be a determination by the Income-tax Officer that the assessee has furnished inaccurate particulars of the income.
3. A refusal on the part of the Taxing Officer to accept the income returned, as correct.

The proceedings, which terminated with the original assessment, are no longer before the Income-tax Officer. The Income-tax Officer started fresh proceedings for the assessment of the Income that had escaped assessment under section 34 of the Act. It has been judicially held that when proceedings are taken under section 34, it is not open to the assessee to show that he should have been assessed at a lower figure of income than was the case, before the proceedings under section 34 were started. The reason given was that the fresh proceedings were meant to assess the "Escaped income" and not to assess the escaped income which had already been assessed *Kasinath Bagla v. Commr. of Income-tax, U. P.*, 4 I. T. C. 472.

Thus the proceedings which ended with the original assessment, are proceedings distinct from the proceedings under section 34 of the Income-tax Act. "If the two proceedings are separate, a reference to the previous proceedings can be made only by the use of the verb "to have" in the past tense and not by the use of the verb in the present tense.

In view of this, section 28 has no application to a proceeding under section 34 and the decision in the case of *Gurucharan Prosad Khetry* is no longer a good law.

WHO CAN ISSUE NOTICE UNDER SECTION 34.

Income-tax Officers alone are competent to issue notices under section 34 for assessment or reassessment as the case may be, provided they have jurisdiction under section 5 of the Act. Neither the Assistant Commissioner nor the Commissioner can act under section 34—*Abdul Kader v. Commissioner of Income-tax, Madras*, 54 M. L. J. 298.

Of course there is no bar to a succeeding Income-tax Officer, to issue notice u/s 34 and to make assessment or reassessment, notwithstanding the fact that the original assessment was made by his predecessor.

NOTICE HOW SERVED.

Notice under section 34 is to be served in the same manner as notice under section 22(2) is served. The Income-tax Authorities may call for the return of income which has partially or wholly escaped assessment.

Service of Notice is obligatory and the assessee must be allowed 30 days time to submit the return under section 22(2) read with section 34.

Failure to comply with any requisition u/s 34 entails the same consequence as in the case of a failure to comply with the requisition u/s 22(2) and the Income-tax Officer is entitled to make an assessment u/s 23(4) to the best of his judgment. *In the matter of Kedar Nath Kesriwal*, 34 C. W. N. 1095.

LIMIT OF JURISDICTION.

Jurisdiction u/s 34 is limited to assessment of extra income, not assessed. There is no jurisdiction to make new assessment for taxing whole of that assessment, *In re: Kasi-nath Bagla*, A. I. R. 1932 All. 1.

Where an assessment has already been made in respect of the previous accounting year u/s 34, the question whether all income which had accrued and has escaped assessment had been assessed to tax or not depends on the investigation of the facts of the case—*Baldiodas Rameswar*, 135 I. C. 281 (Calcutta).

Income, profits or gains which the I. T. O. is authorised and

bound to assess u/s 34 is the income, profits or gains chargeable to income-tax, that have escaped assessment. It is not incumbent on him to reopen the assessment as a whole and ascertain denovo the whole assessable income of the assessee—*Commissioner of Income tax v. T.S.T.S. Chettiar Firm*, A.I.R. 1931, R. 333.

The executive instruction is that an assessment must not be reopened on the ground of over assessment ; but where there has been an under assessment, the Income-tax Officer is bound to reopen the case for proper assessment. Assessment made u/s 23(4) could be reopened u/s 34 by the Income-tax Officer on the sole ground that there has been an under-assessment in respect of particular source of income. *In the matter of Sundersa Iyer*, 2 I. T. C. 173.

C. J. Rankin of the Calcutta High Court in *Satyendra Mohon Roy Chaudhury*, A. I. R. 1930 Cal. 627 observes : "in my opinion it is always open u/s 34 to an assessee to show in any way he can that income, profits or gains alleged to have escaped assessment and for this purpose it is not true that income, profits or gains have necessarily escaped assessment because they have not been assessed under the right head. But if it is once shown that income has escaped assessment, the assessee cannot u/s 34 resist proceedings to be assessed merely by showing that other income, profits or gains must have been assessed at too high a figure." The language of section 34 does not point to an intention to give to the assessee a right to reopen the whole assessment before being rendered liable to further tax. It is not for the High Court to determine whether the administrative inconvenience entailed by such a right would be much or little, or whether it would afford any sufficient reason for refusing to the assessee a right to reopen the whole matter. It is clear that the initial duty of the Income-tax Officer is merely to assess the income which has escaped.

It must be borne in mind that an assessment cannot be reopened on the ground that there has been an over-assessment on other unconnected heads.

The Income-tax Officer is not bound to re-open the whole assessment for raising the rate of tax. He must confine himself to the particular item which has been omitted—*In the matter of Palaniappa Chettiar*, 122 I. C. 339. Where the assessment of super tax was completed as if the assessee was H. U. F. but subsequently found to be individual, proceeding u/s 34 was started although no portion of income escaped assessment, but that the income was assessed at too low a rate—*In the matter of Choteylal*, A.I.R. 1932 All. 83.

Where the I.T.O. made an assessment after due inquiry,

the succeeding officer cannot initiate proceeding u/s 34 simply on the ground that he does not agree with his predecessor. The principle involved is that the Income-tax Officer cannot arbitrarily change any assessment but if fresh light and facts are forthcoming, he can—*In re : Sankralingya Nadar*, A. I. R. 1930, M. 209.

It has been stated before that an Income-tax Officer is competent to reassess u/s 34 the original assessment made on the sole ground that some income, profits or gains chargeable to income-tax, has escaped assessment.—*Monohar Lal Diokaran Das v. Commr. of Income-tax, Punjab*, 118 I. C. 436.

LIMITATION & JURISDICTION.

Proceeding under section 34 can be started at any time within one year of the end of that year. Necessarily a notice under section 34 shall have to be served within that period, the assessment may or not be completed within the time limit of one year. Whatever may be the reason for which income-tax officer should fail to assess any income within the period prescribed by law, he is not competent to assess it after the expiration of the period of limitation—*In the matter of Ganesh Das*, A. I. R. 1927 L. 248. This time limit of a year is applicable only to the notice, the rest of the proceedings is not further limited as to time—*In re : Kedar Nath Kesriwal*, 34 C. W. N. 1093 : A.I.R. 1931 Cal, 209.

ASSESSMENT AFTER THE TAX YEAR, IF LEGAL.

Although the language of the Income-tax Act is naturally suited to the normal case of taxation carried through all its processes within the compass of the tax year, yet apart from section 34, of the Act there is no provision which would justify the imposition into the Act of an implied prohibition against the making of an assessment after the expiry of the tax year. Section 34 is applicable in two cases *e.g.*

1. When income has escaped assessment in any year,
2. When income has been assessed at too low a rate.

In either of the two cases, an assessment or re-assessment is possible of such income which has escaped assessment or has been assessed at too low a rate ; but such notice shall be served within one year after the expiry of the tax year. Thus in two cases to which section 34 applies, if no notice is served within the year following the tax year, no subsequent assessment or re-assessment can be made, but that is not to say that in no other case can an assessment be made after the expiry of the tax year.—*Sir R. N. Mukherji and others v. Commissioner of Income-tax, Bengal*, 38 C. W. N. 320 P. C. ; 147 I. C. 663.

ANY YEAR—MEANING OF.

The expression 'any year' must be read as meaning the year during which proceeding in assessment in respect of that very year should have been initiated.

Consequently when an assessment has been duly made but for some reason the same is subsequently cancelled, the period of limitation for taking proceedings u/s 34 cannot be taken to run from the date of such cancellation—*Burn & Co. v. Commissioner of Income-tax, Bengal*, 38 C. W. N. 205.

NOTICE FORM UNDER SECTION 34.

When proceedings u/s 34 are initiated, it is not necessary to serve any uniform notice, although the Central Board of Revenue has got a prescribed form of notice. The Calcutta High Court in the case of *Messrs Burn & Co.*, 38 C. W. N. 205, has rightly held that section 34 does not prescribe any standard form of notice; a letter, written by the Income-tax Officer containing all the details provided for in the form prescribed by the Central Board of Revenue, was held to have sufficiently complied with the requirements of section 34.

FIRM IF CAN BE REGISTERED U/S 34.

Registration of firm can be made under Rule 2, clause B where it is laid down that application shall be made "If not part of the income of the firm had been assessed for any year u/s 23, before the income of the firm is assessed u/s 34." Thus there is a provision for registration even in an assessment u/s 34, provided the firm has not been previously assessed u/s 23.

ESTOPPEL AND RES JUDICATA.

Principles of Res judicata are not operative in income-tax proceedings. It has been held by the various High Courts, that Income-tax Officer is not a court, except to a limited extent u/s 37 and that the rules of the Civil Procedure Code are not applicable. Nevertheless the assessment should not be capricious or whimsical. Income-tax proceedings are rather quasi judicial in nature, formalities of the Civil Procedure Code are not necessary but still the Taxing Authorities must be guided by strict judicial principles. Since each assessment is a separate unit and since, the doctrine of resjudicata has no bearing in the Income-tax Act, a succeeding Income-tax Officer is competent to initiate proceedings u/s 34, when the original assessment was made under section 23(4)—*Manohor Dekaran Das*, A. I. R. 1929 L. 273.

Similarly we find that adjudication arrived at by one Income-tax Officer can be reopened by his successor if fresh facts are forthcoming. Of course the Income-tax Officer

should not act arbitrarily and he must not usurp revisional jurisdiction not vested in him by law.—*Deokinandan & Sons*, A. I. R. 1930 Mad. 209 and *In re: Shankarlingya Nadar*, 126 I. C. 273.

RATE OF TAX u/s 34.

The rate of tax applicable u/s 34 is the rate in force on the year for which assessment is made. If a notice purported to have been issued u/s 34 for 'escaped income' of 1928 calendar, is issued within the statutory period and assessment is completed in 1934-1935, the rate of Tax, applicable, will be that in force in 1928-1929 and not that of 1934-1935.

APPEAL.

Order under section 34 is appealable provided the assessment is made under any section other than section 23(4). An Assessee who is assessed u/s 34, is entitled to all the amenities which are conferred to an original assessee.

NOTICE PERFECTLY VALID, ASSESSMENT ULTRA VIRES ; WHETHER FRESH ASSESSMENT TENABLE.

When assessment by a special Income-tax Officer is ultravires and made without jurisdiction, fresh assessment by an Income-tax Officer having jurisdiction, is perfectly valid, provided the notice was served within the statutory period. "It is open to the Income-tax Department to resume the proceedings, at the stage up to which it has been valid by a competent officer and proceed to assessment although the date of such resumption may be beyond one year from the expiry of the financial year concerned. *In the matter of Lachiram Basantilal Nathani*, 34 C. W. N. 1206.

CHARGEABILITY AND ASSESSABILITY—DISTINCTION BETWEEN.

There is a clear distinction between the two. The former expression connotes liabilities to pay income-tax, the latter has reference primarily to the machinery which ought to be utilised and the procedure that must be followed in determining the amount which should be levied as Income-tax. *Lakshmi Insurance Co. Ltd. v. Commr. of Income-tax, Punjab*, A. I. R. 1931 L. 441.

NOTICE SERVED ; RETURN MADE, WHETHER DE NOVO PROCEEDINGS ARE TO BE STARTED AGAINST THE SUCCESSOR.

Section 26 gives wide power to the Income-tax Officer to proceed to assess the successor as if he were the predecessor, if in the course of making the assessment, he discovers another person to be the successor. The Income-tax Officer can then

and there assess that person u/s 26(2) and that section nowhere says that *denovo* proceedings are to be started.

When income has escaped assessment, it can be made u/s 34 on the successor of the person, who, if no succession had taken place, would have been liable to tax and if such assessment is otherwise valid, it is not invalidated by the fact that the succession took place after the close of the year in which the Income escaped assessment.—*Commissioner of Income-tax Madras v. Nachel Achi*, A. I. R. 1934, Mad. 63.

ASSESSMENT ON PARTNER u/s 34. NON-ASSESSMENT OF THE FIRM IS NO BAR.

A notice u/s 34 has to be served on the partner within the time allowed, whether notice has been served on the firm or not. An assessee cannot object to this procedure and he cannot possibly take his stand that unless the firm to which he is a partner is assessed, he cannot be assessed. In the case of *Ninchand Daga*, 35 C.W.N. 534, C. J. Rankin observes : "The Indian practice is to impose Income-tax by the Finance Act of each year at certain graduated rates upon individuals and at the maximum rate upon registered firms super-tax is not imposed on registered firm but is imposed upon certain conditions upon the individual partner in respect of his total income which includes the share of the firm's profits. The firm and the individual are each required to render a return of total income u/s 22(2), and they can be required to produce accounts or documents u/s 22(4).To collect tax effectively, without unnecessary inconvenience to the subject, without inconsistency in result and without unnecessary duplication of work on the part of the Income-tax Authority, it is obvious that the profit of the registered firm should be ascertained as a whole before assessment is made upon the individual partner. But I can find nothing in the Act by which the firm is to be assessed first, still less that the assessment on the firm is to operate as a sort of estoppel in favour of the individual shares. In clause (b) of section 14(2) the word is 'have' and not 'has'. The language of this clause may be compared with that of clause (a) of the same sub-section and that of the proviso to section 55. This clause applies to firms which are not registered as well as to those which are registered; while both firms and individuals are liable to other tax by the plain wording of the Finance Act, the clause exempts the individuals from payment in respect of certain profits as soon as those profits are in the hands of the firms assessed, but it does not exempt him at all in respect of profits which have not been assessed.

Whether a notice under section 34 was served on the

firm or not, a notice u's 34 would have to be served on the partner to prevent him escaping payment of super-tax and to collect income-tax on his individual income at the higher rate appropriate to his true income.

He is clearly a person liable to pay tax on income of his own which has escaped assessment, what answer has he to the Finance Act which imposed these taxes upon him. In my opinion he has none".

35. (1) *The Commissioner or Assistant Commissioner may, at any time within one year from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision under section 33 and the Income-tax Officer may, at any time within one year from the date of any demand made upon an assessee, on his own motion rectify any mistake apparent from the record of the appeal, revision or assessment, as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by the assessee :*

Provided that no such rectification shall be made having the effect of enhancing an assessment unless the *Commissioner, the Assistant Commissioner or the Income-tax Officer, as the case may be*, has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard.

(2) Where any such rectification has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 29, and the provisions of this act shall apply accordingly.

RECTIFICATION OF MISTAKES.

The power conferred upon the Commissioner or Assistant

Commissioner of Income-tax or the Income-tax Officer by section 35 to rectify a mistake whether on his own motion or on the application of an assessee is confined to the rectification of mistakes patent from the facts or documents which were before him when he passed his revisional, appellate or original assessment order, as the case may be. This section does not confer on the officers general power of review or authorise any assessee to introduce any new facts in connection with the said assessment. An Income-tax Officer should not correct mistakes in cases that have been dealt with by the Assistant Commissioner on appeal or the Commissioner of Income-tax in revision without reference to the Assistant Commissioner or the Commissioner of Income-tax as the case may be. (I. T. M., para 83).

WHO CAN ACT UNDER THE SECTION.

The Income-tax authorities namely the Commissioner, the Assistant Commissioner and the Income-tax Officer can rectify any mistake patent on the face of record within one year from the date of order. Sufficient cause as mentioned in section 27 has no application here inasmuch as no petition lies after one year nor are the authorities entitled to rectify any mistake after the lapse of a year.

ENHANCEMENT AFTER RECTIFICATION.

Where rectification has the effect of enhancement of the demand, notice must be served on the assessee to have his say. Rectification of a mistake which has the effect of enhancing the assessment cannot be made after the expiry of one year from the date of demand, no matter if the assessee moves the court within the prescribed period: *In the matter of Delhi Cloth and General Mills Co. Ltd.*, 117 I. C. 383 : A. I. R. 1929 L. 326. In the case of *Zesaram v. Commr. of I. Tax*, A. I. R. 1927, L. 421, it has been held that rectification, enhancing the assessment after a year is bad in law.

MISTAKES PATENT ON THE RECORD.

Mistakes in this section imply mathematical mistakes and nothing more. Error of law, misapplication or misinterpretation of law is not a mistake under section 35. Section 35 does not authorise revisional jurisdiction. In the case of *Trikamji Jibondas*, 86 I. C. 170 Justice Dawson Miller observes: "I do not consider that section 35 has any application to the facts of the present case.....the real question is whether there was, in the circumstance of the case, any mistake apparent from the record of assessment which would entitle the assessee to a refund. In my opinion there was not." But the mistake must be so apparent as to justify under section 35. It does not provide an additional reason

for appeal to the Commissioner; *In the matter of Jubeli Mills*, 89 I. C. 595. Section 152 of the Civil Procedure Code is practically analogous to section 35 of the Indian Income-tax Act. It runs thus:—

“Clinical or arithmetical mistakes on judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties.”

The only difference is that u/s 35, rectification must be made within one year from the date of the order.

LIMITATION.

Under this section rectification is permissible within one year from the date of demand, from the date of any order in appeal and from the date of order under section 33 by the Income-tax Officer, Assistant Commissioner and Commissioner respectively. It must be remembered that in case of revised assessment limitation will run from the date of the revised assessment: *In the matter of Tricumchand Dansing*, 32 C.W.N. 287.

36. In the determination of the amount of tax or of a refund payable under this Act, Tax to be calculated to nearest anna. fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

SCOPE.

It provides that in an Income-tax assessment fractions of an anna less than six pies shall be eliminated.

37. The Income-tax Officer, Assistant Commissioner and Commissioner shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents; and
- (b) issuing commissions for the examination of witnesses;

and any proceeding before an Income-tax Officer, Assistant Commissioner or Commissioner under this Chapter shall be, deemed to be a "Judicial proceeding" within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

ARREST.

An I.T.O. is a tribunal within the meaning of S. 135(2) C.P. Code, and a person attending Income-tax Office on a requisition under section 23(2) is not liable to arrest—*Basheerswar Nath v. Amolak Ram Amin Chand & Co.*, A.I.R. 1933 Lah. 214

INCOME-TAX OFFICER WHETHER COURT OR NOT.

So far as the Income-tax Act is concerned, there is nothing in the Act which states that an Income-tax Officer proceeding to assess the income of an assessee and to determine the amount of such assessment is a court. On the contrary the provisions of section 37 suggest that except for certain purposes the Income-tax Officer is not a court.

Section 37 states that the Income-tax Officers, specified therein, shall for the purpose of Chapter IV have the same powers as are vested in a court under the Civil Procedure Code when trying a suit in respect of the following matters namely (a) enforcing the attendance of any person and examining him on oath or affirmation, (b) compelling the production of accounts and (c) issuing commissions for the examination of witnesses and that any proceeding before an Income-tax Officer, Assistant Commissioner, or Commissioner, under this chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 of the Indian Penal Code.

If an Income-tax Officer in making an investigation was a court, there is no necessity for the provisions of section 37. It is only for the purposes stated in that section that he is to be deemed a court.

In *Lal Mohon Poddar v. Emperor*, 55 Cal. 423, it was held that a proceeding before an Income-tax Officer on the production of account books pursuant to a notice under section 23(2), Income-tax Act, is a "judicial proceeding" only for the purpose of sections 193 and 228, but not of section 196 of the Indian Penal Code and that conviction under section 196 for the production of false accounts is bad in law.

As we read section 37, it seems to us to be clear that the legislature has, for the purpose of punishing offences under sections 193 and 228 of the Indian Penal Code (and under no

others) converted proceedings before the officer mentioned therein which are not judicial proceedings ordinarily into "judicial proceedings". Similar views have been expressed by Chief Justice Rankin in the case of *Harmuk Roy Dulichand*, 56 Cal. 39. "We are of opinion that an Income-tax Officer proceeding to assess an assessee after making an enquiry as contemplated in the Income-tax Act is not a court."

The Indian Evidence Act has got no applicability in Income-tax proceedings.

It may be pointed out in this connection that the insertion of the words "and for the purposes of section 196" overrides the decision in the case of *Lal Mohon Poddar* 31 C. W. N. 996.

In the case of *Shell Company of Australia Ltd. v. Federal Commissioner of Taxation*, (1931) A. C. 275, their Lordships of the Privy Council have held that the Board of Review of Taxation is not a court exercising judicial power, but is only an executive tribunal.

JUDICIAL PROCEEDING.

In the criminal procedure code, it is defined thus: "judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath".

The power to take evidence on oath which includes affirmation as well is the characteristic test of "judicial proceeding".

POWER OF I. T. O.

U/s 37, an I.T.O. has a limited power *e.g.*

- (a) enforcement of attendance of any person and examination on oath.
- (b) compelling the production of documents.
- (c) Issuing commission for the examination of witnesses.

DOCUMENT.

In the general clauses Act, the term has been defined thus:

"Document means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be issued or which may be used for the purpose of recording that matter."

It follows therefore that the expression "Documents" connotes accounts as well. But having regard to the fact that in section 22(4), the terms "Documents" and "accounts" have not been used as having identical meanings, when a petition u/s 37 is made, it is for the I. T. O. to accept or reject the prayer. No appeal lies against an order refusing to call for documents etc., u/s 37; but in my opinion the assessee has an inherent right to pursue that point before the appellate authority against the original assessment.

Power to call for information. 38. The Income-tax Officer or Assistant Commissioner may, for the purposes of this Act,—

- (1) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses ;
- (2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons, for or of whom he is trustee, guardian, or agent, and of their addresses.
- (3) Require any person whom he has reason to believe to be engaged in business, to furnish him with a return containing particulars of the location and style of his principal place of business, and of his branch business, if any, the names and addresses of his partners in any business, and the extent of his own share and the shares of all such partners in the profits of such business or businesses.

SCOPE

This section confers upon the Income-tax Officers or the Assistant Commissioner power to call for informations namely (1) the names and addresses of the partners of a firm, (2) the name of the manager or the names of all adult male members of a joint family together with their addresses and the name and address of the beneficiary, namely the trustee, guardian or agent. (3) Name, Style, Principal Place of business with branches together with shares thereof.

NON-DISCLOSURE IS PUNISHABLE.

Section 51 provides that if the requisition under section 38 is not complied with an assessee shall be convicted before a Magistrate with fines which may extend to Rs. 10 for every day during which the default continues.

39. The Income-tax Officer or Assistant commissioner, or any person authorised in writing in this behalf by the Income-tax Officer or Assistant Commissioner, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

SCOPE.

The officers mentioned under this section enjoy certain privileges. They are empowered to inspect, take copies or cause copies to be taken from loan company, banks, registration office, from the mortgagees, and from the debenture holders without any fees.

CHAPTER V.

Liability In Special Cases.

40. In the case of any guardian, trustee or agent of any person being a minor, lunatic or idiot or residing out of British India (all of which persons are hereinafter in this section included in the term "beneficiary") being in receipt on behalf of such beneficiary of any income, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age, sound mind, or resident in British India, and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

EXTENT OF ITS APPLICATION.

This section is applicable to income, profits or gains of minors, lunatics, idiots and residents out of British India. The following conditions must be satisfied to make the guardian, trustee or agent liable to income-tax for their profits namely (1) the person to be charged must be either a guardian, trustee or agent of another, (2) that he must be in direct receipt of the income of such person, chargeable to income-tax, (3) that the minor, lunatic or idiot and non-resident would, if he is not a minor etc., be a person for whom income-tax can be levied and recovered. Section 40 of the Income-tax Act, is not a charging section but is a machinery one. It enables the Income-tax Officer to take steps to assess trustees, guardians as representing their separate beneficiaries or wards as the case may be, if they so choose. But the crown is not compelled to resort to it and the following section—*Commissioner of Income-tax v. J. F. Saldanah*, A. I. R. 1932 Mad. 378, 138 I. C. 1.

ENGLISH ACT.

Under the English Act chargeability depends on the trustee having control over the property of an incapacitated person

but under the Indian Act it is applicable to a person in direct receipt on behalf of any beneficiary of his income, profits or gains.

TAXATION OF MINOR.

Where there is no guardian, etc., there is nothing to prevent direct taxation of minor etc., in respect of his income, as the section only applies if there is a guardian. It cannot be contended that where there is no guardian, the minor etc., cannot be assessee. He is a person and as such can be taxed in respect of his income. (*New Market Commissions v. Rex*, 7 Tax Cases, 49).

In the case of *Royal Exchange Association Co.*, 7 Tax Cases 387, it was held that where a trustee resides abroad and does not receive any dividend on foreign shares which are paid to the beneficiary resident abroad, he cannot be assessed in respect of such dividend.

LIABILITY OF A TRUSTEE, ETC.

The use of the words "in like manner and to the same amount" limits the liability of a trustee, guardian or agent. The Income-tax Officer while making an assessment, must remove from his mind altogether the trustee, etc., and consider the income of the beneficiary. He must ascertain to what allowance the beneficiary is entitled and then to bring back existence of trustee for the purpose of recovering tax. But in India the case is governed by section 4(1). Under section 40 the trustee is an assessee and Income-tax Authorities would not make an assessment if the income remains abroad; even if the trustees brought it in British India, it could not be taxed except under section 42, as such profits are part of the capital and not income.

Attention is drawn to the decision in the case of *Hotz Trust of Simla*, A. I. R. 1930 L. 1929. (Where there are trustees, the status shall be association of individuals).

Section 40 was enacted to provide for certain special cases without its affecting in any way the liability to be taxed under the charging sections. It is merely a machinery section for the collection of tax in special cases, making the trustee liable in certain cases, where the beneficiaries are difficult or impossible to get at, and where the trustee acts as a conduit pipe for the conveyance of the income to the beneficiaries. It does not affect the charging sections 3 and 10, under which trustees as an association of individuals are liable to be assessed. There is practically no difference between the English and the Indian law in this respect (*Williams v. Singer*, 7 T. C. 37, *Tischler v. Aphorpe*, 2 T. C. 89, *Werle & Co. v. Colquhoun*, 20 Q. B. D. 753, *Fry and Shirels Trustees*, 6 T. C. 583 referred to)—*Hotz*

Trust, Simla v. Commr., of I. Tax, Punjab, A. I. R. 1930 Lah. 929, 129 I. C. 116.

In *Williams v. Singer*, 7 T. C. 37, Lord Phillimore observes: "It may perhaps be said that when there is a trust for accumulation or for payment of debt, no person can be said to be entitled to the profits and in such case the trustee is to be the person to be assessed or charged. There are disbursements which may have to be made in the course of conducting a business, which a prudent owner would consider as deductions from profits, which trustees would make before they paid the net income over to the beneficiary, but which nevertheless for income-tax purposes, as the law at present stands, are not considered as legitimate deductions for income.

If the revenue is to receive its full quota, it would seem that the assessment must be put on the trustee and not on the beneficiary and in such cases the trustee is the person to be assessed". (*Vide Tischler v. Aphorpe*, 2 T. C. 89 *relied on*).

41. In the case of income, profits or gains chargeable under this Act which are received by the Courts of Wards, the Administrators-General, the Official Trustees or by any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager in the like manner and to the same amount as it would be leviable upon and recoverable from any person on whose behalf such income, profits or gains are received, and all the provisions of this Act shall apply accordingly.

SCOPE.

Section 41 is merely auxiliary to section 40 and is confined to Court of Wards, Administrator-General, Official Trustee, Receivers or Managers appointed under the orders of a court.

LIABILITY.

Such receivers, etc., are liable only in respect of the amount received by them as such but in case of distribution of assets, they may be made personally liable for the tax. Section 65 lays down that a person paying tax on behalf of another must be indemnified for the same. Generally speaking the beneficiary is the person who should be charged, but in certain cases the trustee might be the person to be charged, as for instance,

when he holds property in trust for some body who cannot deal with it, say an infant or lunatic or in cases of trusts for accumulating of income etc., the person charged with the tax, is neither the trustee nor the beneficiary as such, but the person in actual receipt and control of the income which it is sought to reach. (*Williams v. Singer*, 7 T. C. 387, *Pool v. Royal Exchange Assurance*, (1921) A. C. 65 approved)—*In re: Currimbhoy Ebrahim Baronetcy*, 5 I. T. C. 491. On appeal to the *Privy Council*, A. I. R. 1934 P. C. 116, it has been held that the money employed for maintaining the funds and defraying outgoings the appellants are liable to be assessed. It has been further held that the balance of the trust income paid to the baron is also liable to tax.

EXECUTORS AND TRUSTEES.

Executors and trustees will be assessable to tax in respect of any income of the estate which has not been taxed at the source. When, for instance, a business is carried on by trustees, assessment will be made on them in respect of the statutory profits of the business;—(*Reid's Trustees v. C. I. R.*, 8 A. T. C. 213.)

When there are circumstances that would entitle any other tax-payer to relief, similar claims may be made by trustees, but they are not entitled to claim earned income or personal allowances or tax at the reduced rate, as these are personal to the recipients of the income. Where one of the trustees is himself a beneficiary, he cannot claim earned income allowances in respect of his share of the profits, although he has actually been engaged in earning it, since such activities have been exercised qua trustees and not qua recipient (*Fry v. Shiel's Trustees*, 6 T. C. 58, *McDougall v. Smith*, 7 T. C. 134.)

When a salary is paid to a trustee, including a trustee-beneficiary, such salary will be allowed as an expense in computing the profits of the business and will be assessable subject to earned income relief in the hands of the recipient. Where remuneration is paid to a trustee out of the general income of the estate, the payment in question is annual in nature and subjected to tax at the source—*Baxendale v. Murphy*, 40 T. L. R. 784, *Jones v. Wright*, 6 A. T. C. 895.

Remuneration paid in full will be regarded as a payment out of income after receipt and not as an expense in earning it—*Committee of A. B. Lunatic v. Simpson*, 7 A. T. C. 222.

The duties of Trustees regarding the payment of tax and its deduction from any annual payments made, extend to trustees in bankruptcy and under deeds of arrangement etc., liquidators or receivers. Thus a trustee in bankruptcy is

liable to assessment on the profits which he may derive from carrying on the business—*Armitage v. Moore*, 4 T. C. 199.

In such a case tax would be payable at the full rate on the amount of the statutory profits—*Commissioner of Inland Revenue v. Fleming*, 7 A. T. C. 387.

PROCEDURE.

The following instructions should be followed in the assessment of such income:—

(A) *In cases not falling under section 40 or 41*, the trustee is merely to be regarded as an agent. Receipt (actual or notional) of the income by him, or accrual of the income to him, is equivalent to receipt by or accrual to the beneficiary. Whether the income be distributed or allowed to accumulate, the beneficiary is to be assessed in respect of it. There is no provision for taxing the trustee in respect of it. The beneficiary may, of course, apply for any refund that may be due. The trustee cannot do so.

(B) *In cases falling under section 40 or 41*, the position is the same except that the Act here provides for recovery of the tax from the trustee. (a) *Where the Trustee holds the entire property in the widest sense of the beneficiary*, the assessment should be made on the trustee, the tax will be recovered from him and he may apply for refunds. The assessment will be made as though the income from the trust property were the total income of the trustee. The assessment will of course be quite distinct from that on any other income in respect of which the same person may be trustee and from that on the trustee's own individual income. (b) *If the trustee does not hold the entire property of the beneficiary*, the assessment on the total income of the beneficiary will be made in the name of the beneficiary and the tax in respect of so much of the income as is received by the trustee will be recovered from the trustee, who may also apply for any refund due in respect of such part of the income, which refund will be calculated with reference to the total income of the beneficiary. These instructions are equally applicable alike (a) where the trustee simply receives dividends, interest on securities or other income on behalf of, and pays such income to, the beneficiary, and (b) where he receives dividends interest, or other income on behalf of the beneficiary and pays a *fixed sum* out of the income to the beneficiary. If the balance of such income accumulates for the benefit of the beneficiary, it is to be regarded as his income of the year in which it accrues or arises to or is received by the assessee.

As regards the question as to who should apply for refunds in respect of interest on securities belonging to estates vested

in the Administrator General or Official Trustee see paragraph 92 below.

Income from business conducted by trustee.—Where a business is conducted by a trustee or trustees on behalf of beneficiaries, the assessment is to be made on the trustee or trustees conducting such business, whether section 40 or 41 is applicable or not. If there are trustees, they should be treated as an association of individuals (see judgment of the High Court, Lahore, in *Hotz Trustees v. Commissioner of Income-tax, Punjab*, Reference No. 8 of 1930). The tax will be assessed on and recovered from the trustees. In the hands of the beneficiary or beneficiaries, the income of a business thus conducted by trustees will not be taxed again [section 14(2)(c)]. It will therefore be treated exactly as though it was a share of the profits of an unregistered firm.—I. T. M.

MINORS.

Under the English Act a minor may be charged to tax personally. The Indian Act does not put a bar to assess a minor personally. In default of his paying the tax, the taxing authority can call upon the trustees having control over the funds of a minor, to make necessary payments. The trustees should not however be assessed on behalf of the minor. Both minor and trustees may be called upon to submit a return, but the trustees need not give information on any matter outside the estate for which they are acting—*C. I. R. v. Longford* and *C. I. R. v. Pakenham*, 7 A. T. C. 111.

COURT OF WARDS. ETC.

Section 41 does not make out an exhaustive list of persons, who are liable to tax under special circumstances and cases. The persons made liable should be appointed by or under any order of a court.

42. (1) In the case of any person residing out of British India, all profits or gains accruing or arising, to such person, whether directly or indirectly, through or from any business connection or property in British India, shall be deemed to be income accruing or arising within British India, and shall be chargeable to Income-tax in the name of the agent of any such person, and such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax :

Non-residents.
Provided that any arrears of tax may be recovered also in accordance with the provisions of this Act from

any assets of the non-resident person which are, or may at any time come, within British India.

(2) Where a person not resident in British India, and not being a British subject or a firm or company constituted within His Majesty's dominions or a branch thereof, carries on business with a person resident in British India, and it appears to the Income-tax Officer or the Assistant Commissioner, as the case may be, that owing to the close connection between the resident and the non-resident person and to the substantial control exercised by the non-resident over the resident, the course of business between those persons is so arranged, that the business done by the resident in pursuance of his connection with the non-resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to Income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

(3) Where any profits or gains have accrued or arisen to any person directly or indirectly from the sale in British India by him or by any agency or branch on his behalf of any merchandise exported to British India by him or any agency or branch on his behalf from any place outside British India, the profits or gains shall be deemed to have accrued and arisen and to have been received in British India, and no allowance shall be made under sub-section (2) of section 10 in respect of any buying or other commission whatsoever not actually paid, or of any other amounts not actually spent, for the purpose of earning such profits or gains.

EXTENT OF ITS APPLICATION.

All profits or gains of a non-resident arising through or from any "business connection" or property in British India are chargeable to income-tax in the name of the agent who shall be considered the assessee in respect of such income-tax. Secondly where a non-resident foreigner or a firm or company

carries on business with any person resident in British India and it is found that the non-resident is exercising substantial control over the resident, he shall be charged to income-tax in the name of the resident person. Thirdly, all profits or gains arising from sales in British India of any merchandise exported to British India from outside, would be deemed to have accrued, and have been received in British India.

NON-RESIDENT WITH BUSINESS CONNECTION.

In *In the matter of Bombay Trust Corporation Ltd.*, 56 Bom 216 : 34 C. W. N. 230, the Privy Council held that "agent in section 42 does not mean only an agent in actual receipt of profit but includes a person who comes under the term 'artificially' by the operation of section 43. Under that section, after a person has been notified he would be treated as an agent for all purposes and consequently for assessment under section 42, although he may not be receiving profits on behalf of the non-resident but actually paying them to him. Section 40 does not control sections 42 and 43 in regard to the meaning of the word "agent."

In the case of *Rogers Pratt Shellac Co.*, 52 Cal. 1 : 28 C. W. N. 1074 : 40 C. L. J. 110, the Calcutta High Court held that the company is liable to income-tax for the period 1922 and after under section 42(1) read with sections 4 and 6.

A certain company was incorporated in the United States of America with its headquarters at New York having branch office in Calcutta for purchasing gum, shellac and other Indian products and a factory in the United Provinces. No sale was conducted in India and that transaction was confined to purchases only. It is an admitted fact that no part of the company's income accrued, arose or was received in British India ; it accrued or arose, indirectly through or from business connection in British India. It was held that the company was liable to pay income-tax and supertax for the period before 1922 and under section 42(1) read with sections 4 and 6, for the period 1922 and after. The Calcutta High court did not follow the decision in the case of *Madras Export Co.*, 46 Mad. 360 and explained away the cases of (1) *Sully v. Attorney General*, 2 T. C 1 : 9 (2) *Grainger & Son v. Gough*, (1896) A. C. 325 and (3) *Smidth v. Greenwood*, (1922) 1 A. C. 417.

The English Income-tax Acts lay down a territorial limit. The Indian Act 11 of 1886 followed the English Law but in the Act of 1918 and Act 11 of 1922 the Indian legislature appears to have gone beyond that limit. It will be seen that under the English Act, it is essential that the profits should arise from the exercise of the trade within the United Kingdom. In the Indian Acts, however, in the case of any

person residing out of British India, all profits or gains accruing or arising to such person, whether directly or indirectly, through or from any business connection in British India, shall be deemed to be income accruing or arising within British India. There is no such provision in the English Acts and that distinguishes the English Acts and the cases decided thereunder from the Indian Acts.

The Madras High Court in the case of *Madras Export Co.* 46 Mad. 360 held that section 33(1) of the Indian Income-tax Act did not create a new category of income which could be charged under the Act in addition to incomes mentioned under section 5 as chargeable under the Act, but as section 33(1) is a machinery section for charging non-resident foreigners, and not others, for income-tax purposes the learned Judges failed to appreciate the differences between the two Acts. It followed practically the decision in the English case of *Smidth & Co. v. Greenwood*, (1922) I. A. C. 417.

BUSINESS CONNECTION.

In the case of *W. H. Muller v. Lethem*, 13 T.C. 126, it was held that the Dutch Co. were exercising a trade in the United Kingdom as agents and not as directors and as such they were chargeable to income-tax.

Similarly in the case of *Macpherson & Co.*, 6 Tax cases 107, it was held that where an English firm receives orders for goods for delivery from a foreign firm, it must be in exercise of a trade as agent of the foreign firm.

In the case of *Grainger and Son v. Gough*, 3 Tax Cases 462, it was held that when a foreigner makes profitable contracts with persons in England, such a foreigner must be presumed to be exercising a lucrative business in England and as such is liable to income-tax.

In the case of *Thomas Turner*, 4 tax cases 25, it was held that the test for determining whether a foreigner exercises a trade in the United Kingdom is the place where contracts for sale are effected.

Under the previous Act as decided in the case of *Narayan Parash Ram Tullu*, 20 Bom. 332, the liability of the agent of a non-resident in British India was personal and not conditional upon his having funds of the Company in his hands.

INCOME DEEMED TO ARISE IN BRITISH INDIA.

The Imperial Tobacco Co. of India Limited, (26 C. W. N. 745 : 67 I. C. 902) was incorporated in England with Head Office in London and admittedly non-resident in British India. It had business connections with Burma. There were also numerous rice mills, saw mills, cotton ginning mills and vegeta-

ble oil mills. Raw materials "worked up into forms suitable for use" were exported to London. It was held that the produce being sold in London the money received therefrom could not be deemed to be profits or gains liable to tax. It was further held that sections 31 and 34 of the Indian Income-tax Act are to be read jointly, the latter section merely defining who may be included as an agent under section 31. Thus the agent must be in clear receipt of income within the terms of section 31. But Justice B. B. Ghosh observes : "Section 34, in my opinion, was enacted for the purpose of assessing the income of persons residing outside British India who are chargeable with income-tax here but who have not appointed any agents residing in British India who might be assessed under section 33(1). To hold otherwise, it seems to me, would be to support an anomaly that a person receiving his income through an agent in this country would be assessed, but if he asks his debtor to remit the income direct to him he would escape liability to pay the tax, a thing which this section was intended to remove. It is only necessary that the person on whom the Collector has served a notice under section 34 is a 'person employed by, or on behalf of, a person residing out of British India or having any business connection with such person,' and if that condition is satisfied the person on whom such notice has been served shall for the purposes of the Income-tax Act be deemed to be the agent of such person. The question whether the company is a person coming within the description of section 34 presents to my mind very little difficulty."

In the case of *Messrs. Steel Brothers & Co.*, 94, I. C. 466, it was held that the fact of the produce being sold in London and the money being received there did not prevent profits or gains accruing and arising or being deemed to accrue or arise in British India, from being taxable under the Indian Income-tax Act. It was further held that no distinction, so far as liability to income-tax is concerned, could be drawn between profits on produce, which have undergone some process of conversion or working up by the company in Burma and profits on produce purchased by it in Burma and exported in same form as when purchased : *Commissioner of Taxation v. Kirk*, A. C. 588 : *Re : Rogers Pratt Shellac Co.*, *v. The Secretary of State for India*, 52 Cal. 1 followed.

The Secretary, Board of Revenue v. Madras Export Co., 46 Mad. 360 dissented from ; *Greenwood v. Smidth*, 3 K. B. 375 was distinguished.

DIRECT TAXATION OF NON-RESIDENTS.

The old section 31(1) is akin to new section 42(1) ; under the old code under section 33(1) in the case of any person

residing out of British India "all profits or gains accruing or arising to such persons whether directly or indirectly through or from any business connection shall be deemed to be income accruing or arising in British India." But in *In the matter of Bhanjee Ramjee & Co.*, 1 I. T. C., 147, it was held that these are profits or gains arising to the petitioner through or from his business connection in British India in respect of which he is assessable under the Act.

NON-RESIDENT LIABLE FOR SOURCE OF INCOME.

In the case of non-residents, income which neither accrues, nor arises, nor is received, within British India, may be liable to tax under the combined operation of sections 3, 4 and 12. Profits made by a company outside India or premiums of participating policies collected and sent by its branch in India, by investment outside India, are profits or gains liable to tax in India. (*Rogers Pratt Shellac & Co.*, 52 Cal. 1, *Steel Brothers*, A. I. R. 1926 R. 97 followed)—*Commissioner of Income-tax, Bombay v. National Mutual Association of Australasia Ltd.*, A. I. R. 1933 B 427.

BUSINESS CONNECTION.

Justice Mukherjee observes: "I do not see why profits or gains from business connection should not be included in the general expression 'income derived from business' which is used in section 5.....The word 'business' is one of large and indefinite import and connotes something which occupies attention and labour of a person for the purpose of profit.....A concern by reason of which one can be said to have a connection with such an occupation is business connection."

In the case of *Messrs. Steel Brothers and Co., Ltd.*, 2 I. T. C. 19, the Judges of the Rangoon High Court observe: "We admit the difficulty arising from the vague expression 'from any business connection.' Taken in its wide sense it would render liable to Indian Income-tax profits made by a manufacturer in England on single consignment of goods to an importer in India. This is the meaning which the Commissioner of Income-tax seems to have attached on the phrase and is the meaning which the learned Government Advocate contends, is the correct one. It is, however, which we cannot adopt, and as such a meaning would be repugnant to the word 'business' in section 6 as defined by section 2, clause 4 and we can assign no wider meaning to it than the latter words of the definition as 'any adventure or concern in the nature of trade, commerce or manufacture.' It was probably used, as Mr. Justice Chatterjee conjectures, as a compendious expression to cover such concerns in the nature of trade, commerce, or manufacture as arises through a branch, partnership, agency, receivership or management. But be that as it may, its meaning, in our

opinion must be strictly confined to the meaning of the word 'business' in section 6."

Attention is invited to the decision in the case of the *Eastern Extension Australasian and China Telegraph Co.*, 44 Mad. 489 and the observations of Justices Oldfield and Kumar Swami Sastri.

IMPLICATIONS OF THE SECTION.

Under section 42(1) liability of a person resident out of British India can only arise when he has "business connection" or "property" in British India. This section seeks to charge profits or gains accruing or arising to him through the medium of an Agent in British India. The expression "property" should be interpreted liberally and not in the restricted sense as defined in section 9 of the Act.

In *Pondichery Railway Company v. Commissioner of Income-tax, Madras*, A. I. R. 1931 P. C. 165, it was held by the Madras High Court that the Pondichery Railway Company carried on business in British India and profits derived therefrom accrued or arose in British India within the meaning of section 4(1) of the Act and as such the Agent received payment from the South Indian Company, within British India. The Pondichery Company was chargeable to tax. (*South Behar Railway Co., v. Inland Revenue Commissioner* (1925) A. C. 476. referred to).

Section 42(2) makes a person resident in British India liable when there is an actual carrying of business by a non-resident and non-British subject with a person resident in British India—of course the Principal can be charged if available.

In *Turn v. Sealman*, (1928) A. C. 34, a Danish and an English Company opened a line of steamers, the English Company was appointed sole Agent at Hall, which controlled the business. It was held that the Danish company exercised a trade or business through the British Company. The Danish Company was liable. (Attention is drawn to the case of *Remington Typewriter Co.*, 54 Bombay 214 P. C.)

PROPERTY—MEANING OF.

Property in section 42 means something tangible, and not a mere chose in action. A person who has advanced a loan is entitled to merely a debt and that is no property within the meaning of section 42—*In Currimbhoy Ebrahim and Sons Ltd.*, A. I. R. 1933 B 422.

SECTION 42(3)

Section 42(3) fastens liability on a person who disposes any manufacture in British Indian through himself or branch or his business or through Agency; tax should be levied and no allowance shall be allowed under sub-section (2) of section 10.

BUSINESS CONNECTION.

The definition of "business" in section 2(4) is not exhaustive, but it does not restrict the meaning of "business connection". All that is necessary is that there should be a "business" and that non-resident company or person has earned income through such connection (*Commissioner of Income-tax v. Steel Brothers* A. I. R. 1926 R. 97 dissented from)—*In the matter of National Mutual Association of Australasia Ltd.*, A. I. R. 1933, B, 427.

MANUFACTURE IN FOREIGN COUNTRY BUT SALE IN
BRITISH INDIA—

The purpose of section 42 in its first sub-section is to enact that all profits accruing to a person through or from any business connection or property in British India shall be deemed to come within the class of profits taxed by section 4. The third subsection shows that profits arising from sale of merchandise exported to British India are within the class that has been made taxable under section 4.—*In Port said salt Association Ltd.*, 6 I. T. C. 123, A. I. R. 1932 Cal. 626.

An assessee assessed under section 42, in respect of business in which the manufacture of a commodity takes place in a foreign country and the sale thereof takes place in British India, is not entitled in computing the profits or gains of such business to make a deduction representing the proportion of profits earned by manufacture in the country of origin. The phrase "earning such profits" occurs in clause (ix) of subsection (2) of section 10, but the section contains no limit that part of the profits will be exempted although they arise or are received in British India because they have been earned elsewhere.

UNITED KINGDOM LAW.

Where a non-resident person derives profits from enterprises carried on in the United Kingdom, assessments may be raised and tax charged either directly on the non-resident when that can conveniently be done or upon any agent, factor, branch or local manager, whether that agent has or has not the receipt of any of the profits or gains of the non-resident principal, and whether the entire profits do or do not arise directly from the agency. When the agent has the receipt of any moneys of his principal he is entitled to retain any tax he has borne on account of the liability of his principal out of such moneys. These provisions do not apply in the case of a broker or general commission agent in respect of transactions carried through on behalf of non-resident principals in the ordinary course of his business.

It should be noted (a) that there is no need to assess and charge the agent when the principal can be charged person-

ally—*Tischler v. Apthorpe*, 2 T. C. 89; and (b) that the transactions in question must be, technically, carried out in the United Kingdom. This principle is one which is not always easy to interpret in practice. As a rule the fact that a contract is made in the United Kingdom will be sufficient to establish the fact that the profits arising from that contract are profits or gains arising in the United Kingdom.

But when contract is completed entirely outside the United Kingdom the profits arising thereout will not be chargeable to British Incometax by reason only of the fact that the contract was actually made in this country—*MacLaine v. Eccott*, 42 T. L. R. 416. The situation may be summarised briefly by stating that when a non-resident person makes contracts and derives profits therefrom as the result of opening a branch or employing a regular agent in this country he can be assessed and charged to United Kingdom incometax, but when he conducts his business from his own country he cannot be reached, notwithstanding that he may make considerable profits out of his transactions with customers in this country.

Where a non-resident carries on business with a resident in circumstances which lead to the belief that, by reason of the close connection between the two parties, the true profits arising in the United Kingdom do not come into the hands of the resident party so as to be charged to United Kingdom tax, the commissioners dealing with the assessment may charge the resident person in respect of the profits of the non-resident person as though he was the agent of the latter. When it appears that it is impossible to readily ascertain the profits of the non-resident in such cases, the assessment may be made on a percentage of the turn over and returns may be required from the resident person with a view to computing such percentage.

When a non-resident person is charged in the name of an agent in respect of the profits from the sale of goods produced outside the United Kingdom, the agent concerned may claim to have the assessment made on the figure which a merchant or retailer, as the case might be, could reasonably be expected to secure if he had bought the goods in question from the producer or manufacturer direct—Newport.

NON-RESIDENTS.

(Income other than from business.)

Under section 4(1) tax is payable in respect of all income, profits or gains accruing or arising in British India or deemed under the provisions of the Act to accrue or arise or to be received in British India, whether the recipient resides in British India or not. There is little difficulty regarding income aris-

ing in British India and receivable by non-residents under the heads "salaries", "interest on securities," "property," "professional earnings" or "other sources". In cases of income from "interest on securities" and "salaries" income-tax is deducted at the source, and in the case of income under the other heads a non-resident is usually represented by an agent [section 42(1)]. No difficulty has been experienced in determining whether income under any of those heads is taxable. (Para 86 of I. T. M.)

NON-RESIDENTS—INCOME ARISING FROM BUSINESS IN INDIA.

There is no precise definition in the Act which can be used as a test for determining in every particular instance whether a non-resident is or is not carrying on business in British India and how the amount of taxable profits is to be arrived at. Section 42 of the Act contains special provisions regarding non-residents, and rules 33 to 35 prescribe the manner in which and the procedure by which the income, profits or gains may be arrived at in the case of non-residents. Instances are given below of the method to be adopted in dealing with typical cases :—

(1) Indian branches of non-resident firms are liable to assessment under the Act. In order to secure an accurate assessment in such cases, sections 22(4) and 37 enable an Income-tax Officer to require the production of the balance sheet and profit and loss account of the firm as a whole in addition to that of the Indian branch, and also to require the submission of a detailed statement of all the profits credited to the personal account of the head office on account of transactions carried out on its behalf. In some instances, however, the form adopted for the accounts and balance sheets of the head office or the Indian branch does not enable the share of profits properly due to the Indian branch to be accurately gauged while there are certain firms which keep no accounts at all either at their head office abroad or at their branch offices in India. Rule 33 gives Income-tax Officers wide powers to determine how the profits of the Indian branch shall in the circumstances be calculated and enables them to fix as the income of the Indian branch for assessment purposes either a percentage of the turn-over of the business done by the branch or, where this procedure proves unsuitable, an amount which bears the same proportion to the total profits of the business as the Indian receipts bear to the total receipts of the business, or, where neither of the above methods proves suitable, any other more reliable method of calculation. In the case of shipping companies in particular the most suitable method of assessing the Indian branch is usually to calculate tax on the same proportion of the total profits of the company

as the Indian receipts of the company (meaning thereby the sums received either in India or elsewhere on account of goods shipped or passengers carried from India) bears to its total receipts. In the special case of the Indian branches of non-resident insurance companies (life, marine, fire, accident, burglary, fidelity guarantee, etc.), it will probably be found both feasible and equitable to adopt the provisions of rule 35 and assess these branches on the proportion of the total profits of the companies corresponding to the proportion which their Indian premium income bears to their total premium income.

(2) Indian firms allied to non-resident firms of which they are not technically either branches or agencies often succeeded in the past in escaping their proper taxation by manipulation of accounts with the parent non-resident companies. To cite an example, a foreign firm dealing in aniline dyes was registered as a separate limited liability company in India with a capital of Rs. 20,000. The shares were never placed on the market in India, but, with the exception of small holdings by managers in India, were all held abroad. The registered capital was nominal in comparison with the value of the stock-in-trade and the parent company abroad sold to the subsidiary Indian company at a price leaving a margin just sufficient to cover the expenses of the subsidiary company, or causing an actual loss to be shown. Section 42(2) of the Act is designed to prevent a subsidiary Indian firm or company from benefiting by such a manipulation, and enables an Income-tax Officer to assess it on the profits which may reasonably be deemed to have been derived from its Indian business, while, where any difficulty is experienced in arriving at a basis for assessment, assessment on a percentage of turn-over, or other suitable method can be adopted under rule 34. It is to be noted that the provisions of section 42(2) are not applicable where the parent non-resident firm or company is constituted within the British Empire and that the liability to assessment is placed on the subsidiary Indian firm as a principal and not as an agent.

(3) Indian agents of non-resident firms of which they are not technically either branches or subsidiary firms are liable for the payment, on account of their principals, of the tax on their principals' Indian profits under the provisions of sections 42(1) and 43 of the Act. It will be observed that these provisions permit the levy of the tax on a non-resident's business not only where he has established a regular agency in India but also where he conducts his business regularly through a particular agent or casually through various agents. In this case it is not necessary that anything of the nature of a

regular agency should exist in order to make the profits of a non-resident chargeable in the name of an agent. They are so chargeable even when the only connection between the non-resident and the person acting as his agent is that that person is ordinarily and regularly employed as an agent by the non-resident. The Government of India do not, however, desire that in practice the liability to assessment should be enforced except where something definitely of the nature of an agency exists and in particular no attempt should be made to tax the profits of a consignment business pure and simple, merely because the non-resident consignor habitually uses a particular resident as his agent.

In all cases it will be a question of fact whether the connection between the non-resident and the resident is such that an agency can be held to exist. "Agency" for the purposes of this section should be interpreted to mean a regular, not casual, agent and one whose relation to the non-resident principal is such that the principal may reasonably be held to be trading "in the country" and not merely "with the country". If, for example, there is no privity of contract between a foreign principal and a resident who purchases the foreign principal's products through another resident or if the resident vendor has to bear any bad debt arising out of such transactions, the resident vendor is not to be treated as the agent of the non-resident. It is doubtful whether it is practicable to formulate for the guidance of Income-tax Officer any more definite principles than those stated above ; but the following examples may serve to indicate the lines on which decisions should be reached :—

- (a) *B*, a distiller in Glasgow, has agreed to sell to no one in India except *A*, his agent, provided that *A* gives *B* all or an agreed proportion of his trade. *A* purchases from *B* and sells to the trade at his own rate, and all bad debts are *A*'s. No attempt should be made to tax *B* on his profits. His position, in spite of his supplementary agreement with *A*, is merely that of a seller to an Indian consignee who takes the risks or profits of the trade in India.
- (b) *A*, an Indian resident and a large supplier of mill stores, has a monopoly for the sale in India of the belting of a non-resident *B*. *A* is paid commission by *B* on all orders he sends either for his own stock or risk or in execution of orders obtained. He does not confine his purchases of belting to *B*. He stands all loss from bad debts and fixes the prices to be asked for the goods. Here again the

position of *B* is merely that of a seller to an Indian consignee, and no attempt should be made to tax *B*'s profits.

(c) *A* is the Indian agent for hardware and sundries of *B*, a British manufacturer. *A* receives salary and commission from *B* and bad debts fall on *B*. Here there is a regular agency and *B*'s Indian profits should be taxed through *A*.

(d) *A* is the Indian agent for *B*, a firm in an Indian State, who consigns goods for sale in Bombay and China through *A*. The business is purely a consignment business and *B*'s profits on his Indian trade should not be taxed.

In all these cases *A*'s remuneration or profits as agent are liable to tax.

(5) As regards taxation of interest on money lent by a non-resident to a resident in British India, it has been held by the Privy Council in the case of *Bombay Trust Corporation as agent of the Hongkong Trust Corporation* 52 Bom. 702 A.I.R. 1928 Bom. 448 : 34 C. W. N. 230 (P. C.) that there can be a business connection within the meaning of sections 42 and 43 of the Act between a resident borrowing money from a non-resident and a non-resident lending money to a resident, and that the former can be treated as the statutory agent of the latter, u/s 43 of the Act. When, however, a resident takes part for a short period, a casual and isolated loan from a non-resident with whom he has no regular or continuous dealings, it need not be held on the strength of that fact alone that there is a business connection within the meaning of the above section and that the resident is liable as agent on the interest paid to the non-resident.

(6) Casual agents for non-resident firms to whom goods are from time to time consigned have been dealt with in (3) above and no attempt should be made to tax the profits of a non-resident through the agent on this class of business.

In the Madras High Court in the case No. 4 of 1921, *Chief Commissioner of Income-tax, Madras v. Bhanjee Ramjee and Co.*, (Srinivasan Tax cases, Page 147,) it has been held that a person who is not a resident in British India but to whom income arises or accrues through business connections in British India is assessable to income-tax under sections 4 and 42(1) of the Act whether he is a British subject or a foreigner and that the provision in the latter section that such income shall be taxable in the name of the agent of any such person does not mean that it is not chargeable unless assessed in the name of an agent. It will be clear from section 42(3) that the entire profits of a branch or agency of a foreign firm importing goods in

British India are liable to tax in British India irrespective of where the profits accrued or arose, and whether received in British India or not. Thus if a foreign manufacturer has an agency or branch in British India and sells his products through it in British India, he is liable to tax on his manufacturing profits as well as on the merchandising profits, while a foreign head office is not allowed to charge a national commission to its branch or agency in British India on goods exported to the branch or agency and sold by it in British India.

If it is desired to assess a non-resident who has no resident agent through whom such assessment can be made, and whose entire income also cannot be taxed at source or indirectly, a notice under section 22(2) should be served upon him as early as possible in the year by registered post (acknowledgment due) allowing plenty of time for the return to be made. If he then fails to make a return, or to comply with subsequent notices calling for the production of accounts, etc., (in which also ample time should be allowed for compliance), an assessment may be made under section 23(4). When serving such notices on a non-resident, he should be invited in a covering letter to appoint an agent to represent him for income-tax purposes in India.

A person whom the Income-tax Officer has decided, after due notice and hearing under section 43, to treat as the agent of a non-resident, is not entitled to appeal to the Assistant Commissioner against the Income-tax Officer's order until an assessment has been made. But it is open to such person to petition to the Commissioner of Income-tax against the Income-tax Officer's order before an assessment is made; and Commissioners of Income-tax are authorised to dispose of such petitions under section 33 of the Act.

Non-residents whose income arises in more than one province, and who are assessed direct, and not through statutory agents under section 43 of the Act, will be assessed by the I. T. O. Non-residents refund circle, Bombay, who will also deal with applications from them for relief, whether u/s 48 or u/s 49 of the Act. Non-residents whose income arises in a single province and who are assessed direct, and not through statutory agents u/s 43 of the Act, will be assessed by a special I. T. O. appointed by the Commissioner of Income-tax in each province. When he starts assessment proceedings, the special I. T. O. should inform the non-resident that if he is entitled to any refund, he should fill in the necessary forms and present his claim to the I. T. O., Non-residents refund circle.

DEPRECIATION IN ASSESSING SHIPPING COMPANIES.

The following instructions should be followed in regard to

the treatment of depreciation in assessing shipping companies the whole of whose profits or gains neither accrue nor arise nor are received in India :—

If a company furnishes annual accounts for the whole of its business, Indian and foreign, the second method provided by rule 33 should be applied. Depreciation has only to be considered in calculating the world-profits. These are to be calculated according to the Indian Income-tax Act. Profits calculated according to the United Kingdom Act will therefore require certain adjustments. Deductions permitted in the United Kingdom but not permitted in India will have to be added back and deductions permissible in India but not permissible in the United Kingdom will have to be allowed. If any company, however, prefers to claim the depreciation allowed by the United Kingdom Income-tax authorities, the Commissioners of Income-tax may adopt that figure. Otherwise depreciation will have to be calculated according to the Indian rules. What follows applies to the calculation of depreciation according to the Indian rules. For this purpose, a complete depreciation record has to be maintained for the entire fleet. Depreciation begins to run from the first year in which the Company is "assessed", in India, that is, the first year in which its profits (or loss) were determined for the purpose of deciding whether it was liable to Indian Income-tax. Unabsorbed depreciation, *i.e.*, any balance of depreciation which cannot be allowed in any year owing to the profits not suffering to cover the full amount permissible under the Indian rules will be carried forward and allowed as far as possible in calculating the world-profits according to the Indian method in the following year and if necessary in subsequent years. What has been said above about depreciation applies equally to obsolescence.

The proportion $\frac{\text{Indian receipts}}{\text{Total receipts}}$ is applied to the world-profits calculated according to the Indian method (if there are any such profits) and the result is the Indian income liable to tax. No further deduction is permissible from the amount thus arrived at on account of depreciation (unabsorbed or otherwise) or anything else. The due proportion of all allowances permissible is automatically set-off against the Indian profits by the above method.

This method is equally applicable whether a company works out the profits for each voyage or follows any other method of accounting provided that it prepares complete annual accounts for the whole business, Indian and foreign, and furnishes the accounts of gross receipts, Indian and foreign.

Some lines do not furnish complete annual accounts for their

world business. They keep separate complete annual accounts for their Indian trade, that is, for all "round voyages" to and from Indian ports. The proper course is then to apply the method just described treating the profits of the Indian trade and the gross receipts of the Indian trade as though they were the "world-profits" and the "world receipts" respectively. In fact the business other than the Indian trade is ignored.

A difficulty sometimes arises in such cases owing to the fact that the ships employed in the Indian trade are constantly being changed. Unless United Kingdom depreciation is accepted as indicated above a depreciation record will have to be kept for every ship employed at any time in the Indian trade. Depreciation must be allowed on each ship employed in the Indian trade in a given year and the allowance must be a proportion of the annual rate calculated with reference to the number of days spent in the Indian trade whether at sea or in harbour. Any unabsorbed depreciation in any year must be distributed among the ships in the Indian trade in that year in proportion to the capital cost of each, and the unabsorbed depreciation thus allotted to any ship can only be allowed in any subsequent year against the same ship.

The allowance should cease :—

- (a) on ships included in the fleet in the first year in which the company becomes liable to assessment in India (irrespective of whether it was actually found to have a taxable income in that year or not), after the twentieth year beginning with that year ;
- (b) on ships subsequently added to the Company's fleet, after they have been borne on the fleet for 20 years.

In both cases the period may be extended proportionately, where the United Kingdom depreciation is allowed in calculating the "profits of the Indian trade," which take the place as already explained of the "world-profits".

Obsolescence cannot be allowed in these cases. (Para 88 of the I. T. M.)

BRITISH SHIPPING COMPANIES—ASSESSMENT OF.

When assessing British Shipping Companies, the Income-tax Officers should accept a certificate granted by the Chief Inspectors of Taxes in the United Kingdom stating (1) the ratio of the profits of any accounting period as computed for the purposes of the United Kingdom income-tax computed without making any allowance for wear and tear to the gross earnings of the Company's whole fleet and the ratio of the United Kingdom allowance for wear and tear to the gross earnings of the whole fleet, or (2) the fact that there were no

such profits. The expression "gross earnings of the Company's whole fleet" means the total receipts of the Shipping Company, excepting only receipts from non-trading sources, such as income from investments. The following instructions should be observed where British Shipping Companies correspond direct with Income-tax Officers and not through an Agent in British India :—

1. Where a British Shipping Company which corresponds direct with an Income-tax Officer, is unable to furnish its return of income by the prescribed date, it will obtain an extension of time from the Income-tax Officer ; but every effort should be made to file the return as early as possible.
2. The Income-tax Officer will make the assessment as soon as possible after receiving the return and in any case within one month.
3. The notice of demand will be issued on the Shipping Company's agent in accordance with the provisions of the Income-tax Act and a copy of the assessment order will be sent to the company direct. The company will arrange with its agent for the despatch to it of the notice of demand.
4. Provided that the notice of demand can be issued on or before January 15th the period allowed for payment will be sixty days. If the demand is made after January 15th the period will be shorter.
5. For the purpose of sub-section (2) of section 30 of the Indian Income-tax Act, 1922, the Assistant Commissioner will regard it as a proper extension of time to allow the Shipping Company to file an appeal up to the date on which a reply could be received from England if that reply were despatched by the mail in the week following that in which the notice of demand and the copy of the assessment order reached, or could be presumed to have reached, the company.
6. The demand must be met within due date unless the Income-tax Officer agrees to give the agent further time for payment. But in any case the demand must be paid before the end of the financial year. If a demand has been paid before the decision of an appeal where one has been filed and the appeal results in a reduction of the assessment, a refund will promptly be granted in the ordinary course. (Para 89 of the I. T. M.)

AGENT OF A NON-RESIDENT COMPANY.

In the case of *Remington Typewriter Company*, 113 I. C. 602 : 52 Bom. 726, it was held by Chief Justice Marten and Justice Kemp that the Remington Typewriter Co. though an agent of the American Co., under section 42, cannot be assessed to income-tax and super-tax under section 42(1) of the Act or otherwise in respect of any profits made by the American Company on the sale of its goods to the Bombay Co., inasmuch as the Bombay Co., was not in receipt on behalf of the American Co., of the profits in question. Super-tax also cannot be levied for the above reason ; it can only be recovered by the principal officer under sections 56 and 58. It was further held that the Remington Co., Ltd., are Agents of the New York Co., within the meaning of section 43 of the Indian Income-tax Act. On appeal before the Privy Council reported in 54 Bom. 214, their Lordships upheld the decision of the High Court on main points.

Justice Kemp observes : "But the relation between a company and its shareholders is not a business connection under section 42(1) or 43 of the Act. Provision is made in the Act for deducting tax on dividends at the source. Furthermore it was held by the majority of the court in the case of *Imperial Tobacco Co., Limited* 49 Cal. 729:67 I. C. 908 that the company in the case could not be considered as an agent in receipt of dividend on behalf of its shareholders and with this opinion I respectfully agree.....As to the dividends, therefore, I fail to see how *Remington Co.*, (Bom.) can be assessed under sections 42(1) and 43 of the Act."

AGENT EXPLAINED.

"I am of opinion that the agent mentioned in section 42(1) must be inferred to be the agent in receipt of income on behalf of the non-residents arising from the business connection. Such agent would be the person whom the legislature would naturally regard as the assessee, as the income would come to him on behalf of his principal. To hold otherwise would work injustice because if he were an agent in the business connection on behalf of the non-resident and by the terms of his agency, were not to receive the profits or gains arising from the business connection but they were to be received by somebody else, he would have no control whatever over the destination of such profits or gains and the proper person seems to be the person who is in properly legal possession as agent of such profits or gains.....I am of opinion that sections 40 and 43 must be read together and that section 43 in specially referring to the business connection mentioned in section 42(1) inferentially gives to the meaning of agent in section 42(1) an agent in receipt of income on behalf of the not-resident."

In *In the matter of Bombay Trust Corporation*, 52, Bom. 702, it was held that interest paid to Hongkong Co., is profits or gains and as such is taxable under section 4(1) and 6(4) of the Act. It was further observed that the Bombay Corporation is not an agent under section 42 inasmuch as it was not in receipt of interest. There it was held that although under section 43 the Bombay Company may be deemed an agent, it must not be assessed as not being in actual receipt of the income.

THE PRIVY COUNCIL DECISION OF "BUSINESS CONNECTION".

Their Lordships of the Privy Council while accepting the main contention in the case of *Remington Typewriter Co.*, 52 Bom., 726 opined that when the High Court observed that the Bombay Co. was an agent of the non-resident as a result of business connection in British India, the American Co. should be assessed through the Bombay Co., in respect of their profits upon goods sent to British India and that super-tax on dividends can also be charged and is leviable from the agent. It was further held that in order to make a non-resident liable through the agent, he may not be virtually in actual receipt of any income on behalf of the non-resident. This view was echoed in the *Bombay Trust Corporation*, 34 C. W. N. 230, Privy Council.

HINDU UNDIVIDED FAMILY.

A Hindu Undivided Family may have more than one place of residence—*Commissioner of Income-tax, Madras v. V. S. K. S. Somasundaram Chettiar*, A. I. R. 1932, All. 435.

43. Any person employed by or on behalf of a person residing out of British India, Agents to include persons treated as such. or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent :

Provided that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Income-tax Officer as to his liability.

EXTENT OF ITS APPLICATION.

The scope of this section is very wide and it is always a question of fact whether the connection between the non-resident

and the resident is of such a nature that an agency can be safely presumed. A person can be treated as an agent of the non-resident where it is proved that he has any business connection with such person, or that he is in receipt of any income, profits or gains on behalf of the non-resident and further the Income-tax Officer is competent to treat any person as an agent of the non-resident provided he is given an opportunity of being heard by the Income-tax Officer.

DEFINITION OF AGENT.

Agent in section 42 does not mean only an agent in actual receipt of profits but includes within its scope a person who comes under the term "artificially" by the operation of section 43. Under that section after a person has been notified that he would be treated as an agent of a non-resident, he is to be deemed an agent for all purposes and consequently for assessment. He may not be in actual receipt of profits on behalf of the non-resident. Section 40 does not control section 43 in regard to the meaning of the word "agent". This is the view expressed in the case of the *Bombay Trust Corporation Limited*, 34 C. W. N. 230 Privy Council.

PETITION UNDER SECTION 33 IF LIES AGAINST AN ORDER TREATING A PERSON AS AN AGENT.

Any person aggrieved by the decision of an Income-tax Officer treating him as an agent of the non-resident may file a petition under section 33 for the interference by the Commissioner in the matter and the Commissioner is bound to adjudicate on the point.

INTERPRETATION OF THE WORD "AGENT".

Sections 40, 42 and 43 should be read jointly and not disjunctively. The term "agent" in section 40 is extended by section 43 and income, profits or gains are extended by section 42 and, therefore, such agents should be in receipt on behalf of the non-resident, of the income, in order to make the agent liable to be assessed. *In re: Bombay Trust Corporation*, 113 I. C. 593.

Similar views have been expressed in the case of the *Imperial Tobacco Co.*, 49 Cal. 729, 721. Therein it was held that where a person satisfies the condition of an agency, such a person shall be deemed to be the agent of such a non-resident. Similarly in the case of *Remington Typewriter Co. Ltd.*, 52 Bom. 726, it was held that the Bombay Co. was an agent of the Remington Co. of New York.

It has already been stated that sections 40, 42 and 43 are to be read jointly and not disjunctively. But this case of the *Bombay Trust Corporation*, 52 Bom. 702 was reversed by the

Privy Council in A. I. R. 1930, Privy Council 54, where it was held that the interest accrued to the bank outside British India through a business connection in India and that the word "agent" in section 43 is not overridden as regards its meaning by section 40 and is not restricted to an agent in receipt of the profits or gains.

AGENT IN ACTUAL RECEIPT OF PROFIT.

In *In re : Imperial Tobacco Co. Ltd.*, 67 I. C. 908, Justice Woodroffe observes : "On consideration of this matter I am of opinion that section 34 merely defines who may be included as an agent under section 31. If so, the agent, whether we look to sections 31 and 34 must be in receipt of income within the terms of the former section." Therein it was held that the company was not an agent.

But Justice B. B. Ghosh of the Calcutta High Court observes : "under section 31 an agent of any person residing out of British India being in receipt on behalf of such non-resident person of any income chargeable under the Act, is held liable for the tax. If he is actually an agent and in receipt of income on behalf of the principal, nothing more is necessary in order to render him liable, but the tax is to be levied upon and recoverable from him under section 31 irrespective of any other provision in any other section of the Act..... As I read the section the agent of such a non-resident person need not be in receipt of the income on behalf of such person. The mere fact of agency is sufficient to make him liable and to be assessed in respect of the income of the principal."

"It is only necessary that the person on whom the Collector has served a notice under section 43 is a 'person employed by or on behalf of a person residing out of British India or having any business connection with such person'. And if that condition is satisfied, the person on whom such notice has been served shall for the purposes of the Income-tax Act be deemed to be the agent of such person."

APPEAL AGAINST AN ORDER DECLARING A PERSON TO BE THE AGENT OF A FOREIGNER.

When a person is declared an "agent" of a foreigner under section 43, the agent who is assessed for the non-resident principal, is entitled to prefer an appeal u/s 30, against such an adjudication, provided of course, he denies his liability to be assessed as such.

The clause "denying his liability to be assessed" in section 30(1) is wide enough to cover a case of an assessee who denies his liability to be declared as agent u/s 43 of the Act. An

appeal, therefore, is competent against an order declaring a person to be an agent.

If authority is required, the case of *Gokuldas Chunilal*, A. I. R. 1932 Nagpur 152, may be referred to.

AGENT—WHEN TO BE DETERMINED.

The weight of authority is that the Income-tax Officer is not bound to issue a show cause notice each year and that objection if any, can be made at any time before assessment is made.

In *Naval Kishore Khariatilal v. Commr. of Income-tax*, A. I. R. 1930 L. 1014, the objection of the assessee was that no fresh notice had been served upon them u/s 43, but this objection was negatived as not pressed at all.

To me it seems that the above decision ignores the plain provisions of the Act itself. Section 43 clearly says that I. T. O. shall have to cause a notice to be served of his intention of treating him as the agent of the non-resident.

The proviso further lends countenance to the view that no person shall be deemed to be the agent of a non-resident person unless he has had an opportunity of being heard by the Income-tax Officer.

The crux of the whole point is that (a) there must be an issue of notice by the I. T. O. and (b) the person on whom the notice is served shall be given an opportunity.

I am clearly of opinion that section 43 is not independent of the proviso, one is interdependent on the other and therefore the I. T. O. is bound to determine the "agent" annually.

44. Where any business, profession or vocation carried on by a firm has been discontinued, every person who was at the time of such discontinuance a member of such firm shall be jointly and severally liable for the amount of the tax payable in respect of the income, profits and gains of the firm.

Liability in case of
a discontinued firm
or partnership.

NOTES.

Where there has been a discontinuance of any business, profession or vocation of a firm, all partners at the time of such discontinuance shall be jointly and severally liable for the tax. Attention is also invited to sections 25 and 26 of the Act. Section 44 refers merely to liability of a discontinued firm and nothing more.

LIABILITY OF SUCCESSORS.

In the case of *Nihal Chand Kishorilal*, A. I. R. 1927 All.

397, it was observed : "In our view section 44 makes this abundantly clear. It deals with liability in the case of a business which has been carried away by a firm and been discontinued."

WHAT IS DISCONTINUANCE.

"Discontinuance may consist of various forms. It may mean total abandonment or extinction, it may mean self-extinction for the purpose of reconstruction under another form."

SECTIONS 26 AND 44.

"It appears to us that section 44 could not have been designed for any other purpose and applies without any straining of language. Section 26 is equally clear, but in our view it applies to a different consideration, namely, the ascertainment of the assessee within the meaning of section 2 at the time when the assessment is made and it does not affect the rate or the period in respect of which the profits have to be computed. Where any change occurs in the constitution of a firm or where any person has succeeded to any business and we find that the registered firm succeeded to the business of the undivided family,—the assessment shall be made on the firm as constituted at the time of making the assessment, that is to say, in this case, on the registered firm."

RATE.

"We agree with the principle laid down in *Begg Sutherland and Co.*, 2 I. T. C. 30, and are of opinion that the decision in this case follows from it as a necessary corollary. Our answer to the question is that the rate to be assessed upon the income, profits or gains of the accounting period is to be determined by the fact as to who was in fact carrying on the business and making such income, profits or gains during the accounting period. In other words they must be assessed on such income, profits or gains of a Hindu undivided family, the liability for payment thereof falling on the assessee of the registered firm which is the successor to the joint family which has ceased to carry on the business." *In the matter of Nihal Chaud Kishori-lal*, A. I. R. 1927 All. 397.

ACCOUNTING YEAR.

The Income-tax Officer cannot insist on a judicial consideration that the successor is to follow the accounting period of his predecessors. This will work hardship on the successor and he is entitled to adopt any accounting year he likes. He is not bound to apply to the Income-tax Officer for his approval and sanction. On the other hand the Income-tax Officer cannot treat the return of a successor as invalid where the successor does not follow the previous year as adopted by his predecessors.

CHAPTER VA.

Special Provisions Relating to Certain Classes of Shipping.

44A. The provisions of this Chapter shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of British India and carries on business in British India in any year as the owner or charterer of a ship (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act.

Liability to tax of occasional shipping.

44B. (1) Before the departure from any port in British India of any ship in respect of which the provisions of this Chapter apply, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, livestock or goods shipped at that port since the last arrival of the ship thereat.

Return of profits and gains.

(2) On receipt of the return, the Income-tax Officer shall assess the amount referred to in sub-section (1), and for this purpose may call for such accounts or documents as he may require, and one-twentieth of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, livestock and goods shipped at the port.

(3) When the profits and gains have been assessed as aforesaid, the Income-tax Officer shall determine the

sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship until the Customs-collector, or other officer duly authorised to grant the same, is satisfied that the tax has been duly paid.

44C. Nothing in this Chapter shall be deemed to prevent a principal from claiming, in any year following that in which any payment has been made on his behalf under this Chapter, that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid, and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be.

OCCASIONAL SHIPPING—(TRAMP, STEAMERS, ETC.)

Only one person can be taxed under Chapter VA in respect of a particular ship taking up passengers, livestock or goods at ports in British India, and that person is the "principal" within the meaning of section 44A. Such principal may be either the owner or the charterer of the ship. It will be a question of fact in each case in which the ship has been chartered by the owner to another person whether the owner or the charterer is the principal.

Chapter VA is only applicable where the principal (1) carries on business in British India as the owner or charterer of a ship, (2) does not reside in British India, and (3) does not employ an agent from whom the tax would be recoverable under section 42. Where there is no charterer the owner will be the principal. Where there is a charterer it will be a question of fact whether he or the owner is the principal. The business of which the profits are to be calculated and assessed for income-tax under Chapter VA is the business of carrying passengers, livestock or goods shipped at ports in British India, and the person to be taxed is the person (referred to in Chapter VA as the "principal") who carries on that business, but does not reside in British India and does not employ any

agent from whom the tax would be recoverable under section 42. The criterion to be applied is, "who is the person to whom or on whose behalf money is paid or payable on account of carriage of passengers, livestock or goods from a port in British India?"

Generally speaking where there is what is known as a "Time Charter," under which the owners may be said to let the ship out to the charterer, for a fixed sum for a certain period, during which the owners retain no further control over the vessel or her movements, the owners cannot be held to be carrying on business in British India, or even to have a "business connection" in British India, and are therefore not liable to Indian Income-tax either under Chapter VA or under section 42.

Where, however, the ship has been chartered under what is known as a "Voyage" or "Trip" Charter the position is different. Under this kind of Charter party, the charterers are practically in the position of brokers who guarantee to secure a certain quantity of cargo for the owners at certain rates of freight. If the full amount of freight cannot be secured, the charterers are liable to make good the deficiency. Any such deficiency is to be paid by the charterers to the Master, on behalf of the owners, in cash, minus a certain percentage, at the time and place of loading in India. Similarly, if freight is secured in excess of that stipulated, the Master of the ship is to pay such excess to the charterers at the time and place of loading, by demand draft on the owners in London. The Bills of Lading are signed by the Master on behalf of the owners; and the cargo as soon as shipped is therefore, in the constructive possession of the owners, and at their risk. The ship is usually consigned to the charterers or their agents, who look after its interests when in port, and for doing so are paid a commission by the owners. The owners also pay brokerage. In such a case, the owners are carrying on business in British India through their agent, the Master, who receives cargo on their behalf, and receives and makes payments on their account in British India, and thus the owners having no regular or permanent agent in British India are liable to tax under Chapter VA on the profits of the business conducted by the Master on their behalf.

If a ship has arrived in a British Indian port, either on owner's account or under a charter and the non-resident owner, or the non-resident charterer, causes the ship to be chartered, or transfers the existing charter or affects a sub-charter of the vessel, as the case may be, such a transaction, though it does constitute the carrying on of business in British India by the non-resident, does not of itself amount to carrying on business

within British India as the owner or charter of a ship within the meaning of Chapter VA. But if the ship is loaded in any British Indian port the question whether the non-resident owner or the non-resident charterer is assessable to income-tax under Chapter VA must be decided on the principles stated above. Whoever of these two persons causes the ship to be loaded with cargo, and is paid the freight for carrying such cargo, is the person who carries on business within the meaning of section 44A. (Para 90 of I. T. M.).

CHAPTER VI.

Recovery of Tax and Penalties.

45. Any amount specified as payable in a notice of demand under sub-section (4) of section 23A or under section 29 or an order under section 31 or section 32 or section 33, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under section 30 or under section 33A, the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of.

NOTICE OF DEMAND.

Question of payment arises as soon as a notice of demand is served on the assessee specifying the date and place of payment. The income-tax Officer must allow reasonable time for payment. Income-tax Officer has discretion to allow extension of time if necessary.

INCOME-TAX OFFICER IS THE SOLE AUTHORITY.

So far as realisation of tax is concerned, the Income-tax Officer is the sole authority for realisation. The mere fact that an appeal has been preferred or a petition under section 33 is pending, cannot stop collection. Even the High Court cannot interfere in such matter. Of course the Income-tax Officer in his discretion may stay collection till the disposal of the appeal or review as the case may be or he can ask the assessee to deposit such amount of tax for which there is no dispute.

LIABILITY.

A liquidator distributing all assets to contributors without any provision for payment of Crown debt is personally liable

(*Watchmaker's Alliance and Earnest Goode's Stores*, 5 T. C. 117).

DEFAULT.

Question of default arises when an assessee fails to deposit the tax charged within due date or extended date. The term "default" covers cases of the nature e.g. when payment has not been made through forgetfulness even. It does not make the least difference whether the default is deliberate or not.—*In re: Woods and Lewi's*, (1898) 2 Ch. 211.

46. (1) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.

Mode and time of recovery.

(1A) For the purposes of sub-section (1) the Income-tax Officer may direct the recovery of any sum less than the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed the amount of the arrears payable.

(2) The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land-revenue.

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have in respect of the attachment and sale of debts due to the assessee the powers which under the code of Civil Procedure, 1908, a Civil Court has in respect of the attachment and sale of debts due to a judgment debtor for the purpose of the recovery of an amount due under a decree.

(3) In any area, with respect to which the

Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the Income-tax officer may proceed to recover the amount due by such process.

(4) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (3).

(5) If any assessee is in receipt of any income chargeable under the head "Salaries," the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition, and shall pay the sums so deducted to the credit of the Government of India, or as the Central Board of Revenue directs.

(6) The Local Government may direct with respect to any specified area, that income-tax shall be recovered therein, with, and as an addition to, any municipal tax or local rate by the same person and in the same manner as the municipal tax or local rate is recovered.

(7) Save in accordance with the provisions of sub-section (1) of section 42, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the year in which any demand is made under this Act.

METHOD OF RECOVERY OF THE TAX.

The Income-tax Officer is responsible for the recovery of the tax whether the demand represents the tax assessed by himself under section 23 or sub-section (4) of section 23A or whether it represents an enhancement made by the Assistant Commissioner on appeal under section 31 or by the Commissioner in exercise of his powers of review under section 33. Notices of demand under section 29 or under clause (iii) of

sub-section (4) of section 23A in the form prescribed in rule 20 should be issued at as early a date as possible after the assessment is made under section 23 or sub-section (4) of section 23A or when intimation is received of orders of enhancement from superior authorities in order that the tax may be promptly collected. The fact that an appeal has been lodged against an assessment should not stop the collection although Income-tax Officer is empowered, under section 45, in his discretion to treat an assessee as not being in default until an appeal is disposed of. When the Income-tax Officer considers that an appeal is a *bona fide* appeal, he should, in exercise of his discretion under section 45, require the assessee to pay the portion of the tax that is not in dispute and should, under no circumstances, delay the collection of that portion of the tax which is not disputed in the appeal. Similarly section 66(7) of the Act provides that a reference to the High Court shall in no way stop the collection of the tax.

When the tax is not paid within the time prescribed in the notice, or, if no such time is prescribed, by the first day of the second month following the date of the service of the notice or order, the Income-tax Officer should use the powers conferred upon him by sub-sections (1) and (1A) of section 46 and impose a penalty for the default. A penalty can be imposed u/s 46(1) on the person who is responsible for deduction of tax u/s 18(2) and who by failing to discharge this responsibility has become liable to be treated as a defaulter u/s 18(7) of the Act.

Section 46(3) and (4) provide for cases where a special whole time income-tax staff for the actual collection of the tax is employed in any area. Where such a staff is employed, the Commissioner of Income-tax may confer upon that staff any of the powers for the enforcement of any process for the recovery of a municipal tax or local rate imposed under any enactment which is in force in any part of the province, *e.g.*, the powers of distraint. In other areas and, in the areas in which a special staff is employed where the powers for the recovery of municipal taxes or local rates have proved insufficient, the Income-tax Officer may, under section 46(2), forward under his signature a certificate specifying the amount of arrears due from an assessee to the Collector of the district, and the Collector of the district on receipt of such a certificate must proceed to recover the amount specified in the certificate as if it were an arrear of land revenue.

Where the defaulter is a salaried person the Income-tax Officer may, under the provision of section 46(5), require the person paying "salary" to such assessee to deduct from any subsequent payments of "salary" any arrears of tax due from

such assessee whether those arrears are due on account of tax on "salary" or on income from any other sources or on account of any penalty.

The necessity for prompt collection of the tax should be impressed upon Income-tax Officers since not only is delay in the collection of this tax likely to result in loss of revenue for other reasons, but, under the provisions of section 46(7) no proceedings for recovery can be commenced after the expiration of one year from the last day of the year in which the demand is made, with the exception of the special case referred to in sub-section (1) of section 42. That sub-section refers specially to arrears of tax due from a non-resident. For the collection of such arrears no time limit is prescribed as such arrears may be recovered from any assets of the non-resident which may at any time come within British India.

The phrase "proceedings for the recovery of any sum payable under this Act" should be interpreted as relating to proceedings taken under section 46. The issue of a notice of demand is not a proceeding for the purpose of this section.

The above remarks regarding recovery of tax apply also, under the provisions of section 47 to the recovery of any penalty imposed under section 25(2), section 28 or sub-sections (1) and (1A) of section 46. (Para 91 of the I. T. M.)

PROGRESSIVE IMPOSITION OF PENALTY.

The amended Act of 1928 introduces the fact that the Income-tax Officer may impose any small amount of penalty in his discretion and such penalty may be enhanced to the maximum where there is a continued default. It is a discretionary matter pure and simple and the Income-tax authorities must not be unreasonably harsh.

REMISSION OF PENALTIES.

The Income-tax authorities imposing penalties can remit the amount in part or *in toto* provided they are to be convinced that the default in payment is due to some practical financial difficulties or from some other sufficient causes.

APPEAL.

Under the Indian Income-tax Act no appeal lies against an order imposing penalty for default of payment. As the assessee has got absolutely no right of appeal, it is desirable that Income-tax authorities should administer it with a sympathetic spirit. . . .

PROCEDURE FOR RECOVERY OF TAX BY CERTIFICATE.

Where an assessee fails to pay up the demand by due date, the Income-tax authorities may forward to the Collector of the district where the assessee resides, a certificate showing the

arrear demand and the Collector thereupon will proceed to recover the amount as if it were an arrear of land revenue.

PRIORITY OF DEBTS.

Where a Receiver was appointed to collect the rent of a mortgaged property, in a mortgage suit and the Commissioner of Income-tax applied to the Court for an order calling on the Receiver to pay him the tax due by the mortgagor from his collections, it was held that the crown had a right of preference in respect of such debts as against unsecured debts and the court had power to direct payments out of rents collected without any attachment. But what about secured debts?—*Rameswar v. Mary pinto*, 1934 I. T. R. 58.

DISTRAINT.

The Commissioner of Income-tax may direct that such arrear demand may be realised by any process which is enforced for the recovery of municipal tax or local rates by the Income-tax Officer direct. The issue of distraint by the Income-tax Officer must have the previous sanction and approval of the Commissioner.

WHETHER POLICE OFFICER HAS AUTHORITY TO EXECUTE DISTRESS WARRANT.

In the case of *Joyram Shahu and others v. The King Emperor*, A. I. R. 1923 Pat. 111 : 72 I. C. 954, it was held by Justice Ross that "section 46 describes the mode of recovering income-tax. The Collector may, on receipt of a certificate from the Income-tax Officer, recover the amount specified therein as if it were an arrear of land revenue ; but in areas notified by the commissioner arrear demands may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rates.....But even supposing that a distress warrant could be legally issued, the Collector had in my opinion, no authority to issue it to an officer of the Police and the Police Officer executing such warrant could not be said to be acting in execution of his duty as a police officer."

FORM OF WARRANT.

Although the Income-tax Act provides a form of warrant, that is for the convenience and instructions for the Revenue officers and there is nothing in the Act which renders the form obligatory. Of course, if a warrant is issued, it is expedient to issue it in the form as appended in the Act. But this does not take away the right to correct tax without warrant—*In re : Gulab Rai*, A. I. R. 1921 S, 51.

The proviso to sub-section (2) of section 46, has vested the collector the powers of a civil court so far as it relates to attachment and sale of debts due to a judgment-debtor,

thereby giving wide powers for recovery by way of attachment, sale, etc.

DISTRESS WARRANT OR SALE.

The issue of distress warrant is permissible for recovery of any arrear demand, but where nothing is gained by an attachment, can the authorities proceed to dispose of the immovables of the assessee in default? Certainly the authorities are within their rights to put the property to auction in the same way as "Certificate sales" are conducted by the Revenue Court. Tax is recoverable by causing the defaulter's movable property to be distrained and sold—*In re : Gulab Rai*, A. I. R. 1921 S. 41.

ARREAR DEMAND—AND LAND REVENUE.

Where an estate is sold away for arrear of land revenue all incumbrances are annulled and the auction-purchaser enjoys it free from any lien, charge or incumbrances; but so far as sales relating to the income-tax arrears are concerned, the purchaser takes it with all incumbrances: *In the matter of Mathu Krishna Ayar*, 26 Mad. 230. Section 30 of the Act (No. II of 1886) does not convert income-tax into land revenue, but only extends the proceedings for recovery. Sale of land for income-tax does not annul the incumbrances.—*Sankram Nambudripad v. Ramaswami Ayar*, 41 Mad. 691. 698.

DEATH OF ASSESSEE AND LIABILITY OF THE ESTATE.

Where an assessee dies after making a return the Income-tax Officer can assess him under section 23(1). He cannot issue notices under sections 23(2) and 22(4) on his heirs. But where return has not been filed by an assessee within the prescribed time, an assessment under section 23(4) is good in law and the estate of the deceased is liable for income-tax.

There is no provision in the Act for the assessment to income-tax or super-tax of the estate of the deceased person. Justice Greaves of the Calcutta High Court observes: "Now, nowhere in the Act I find that any provision is made for the assessment to income-tax or to super-tax of the estate of any deceased person, and section 55 which imposes super-tax expressly provides that it shall be charged, levied, and paid on the total income of the previous year of any individual, unregistered firm, Hindu undivided family or company. Consequently in my opinion it was not within the competence of the Income-tax authorities to assess Donald Fraser Mackenzie's Estate to super-tax." *In the matter of Mitchel v. Macniel*, 31 C. W. N. 630.

The decision in the case of *Mr. Ellis C. Ried* will be helpful for guidance and is therefore quoted in *extenso*: *In the matter*

of *Mr. Ellis C. Reil*, the Administrator of Sir Henry Proctor deceased. A. I. R. 1931 Bombay 333.

When an assessee on whom a notice is served under section 22(2) of the Act, calling him to make a return for income-tax, dies before making a return of his income, it is not legal for the I. T. O. to make an assessment under section 23(4) of the Act on the deceased assessee.

The definition of "assessee" under section 2(2) of the Act, means a person by whom Income-tax is payable and in terms only applies to a living person.

(a) Is it legal to make an assessment under section 23(4) ?

(b) Can the Demand notice under section 29 of the Act be served on the Administrator of the estate of the deceased ?

Chief Justice Beaumont observes : "It is to be noticed that there is throughout the Act no reference to the deceased person on whom the tax has been originally charged, and it is very difficult to suppose the omission to have been unintentional. It must have been present to the mind of the legislature that whatever privilege the payment of income-tax may confer, the privilege of immortality is not amongst them. Every person liable to pay tax must necessarily die and, practically in every case, before the last instalment has been collected ; and the legislature has not chosen to make any provisions expressly dealing with assessment of, or recovering payment from, the estate of a deceased person. In order that the Government may succeed and the assessment made in this case may be held legal, I think, one must do a certain amount of violence to the language of section 23(4); I think one must either do a certain amount of violence to the language of section 27 or else hold that the privilege conferred on a living person assessed under section 23(4) of getting the assessment set aside is not to be enjoyed by the estate of a deceased person, a distinction for which I can see no logical reason. One must also construe section 29 so as to give to the word 'Assessee,' one meaning in one place and another meaning in another place.

"In my judgment, in construing a taxing Act the court is not justified in straining the language in order to hold a subject liable to tax. If the legislature intends to assess the estate of a deceased person to tax charged on the deceased in his life-time, the legislature must provide proper machinery and not leave it to the court to endeavour to extract the appropriate machinery out of the very unsuitable language of the statute."

Justice Barke remarks : "In a word, it is the word 'assessee' which is to be interpreted widely to include a legal representative in section 23(4). It must be interpreted in the same way throughout. Practically we have to decide whether we can read into the Indian Income-tax Act by implication the rule which is expressed in the English Acts and in section 146 of the C. P. Code that, when any proceedings may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him, *i.e.*, by the legal representative. It is stated in Maxwell's interpretation of Statutes that fiscal statutes must be interpreted strictly in favour of the subject, and I take that to mean that the treasury cannot tax without the express permission of the legislature. That being so, the Commissioner must fall in this case, since undoubtedly there is no express provision in the Act to recover the tax from the estate of the deceased. Further, the rules of the Act are not rules of procedure to be interpreted by Civil Courts, but are more in nature of rules for the guidance of fiscal officers, and it seems to me that such rules are intended by the legislature to be interpreted according to their plain meaning and that they must not be stretched by judicial interpretation."

Section 29 runs thus : "where the I. T. O. has determined a sum to be payable by an assessee under section 23, or when an order has been passed under sub-section (2) of section 25 or section 28 for the payment of a penalty, the I. T. O. shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable."

Chief Justice Beaumont observes : "Well, it is quite clear that in this case the word 'assessee' as used in the first part of that section 'a sum to be payable by an assessee under section 23' must be the deceased person, and it is equally clear that the second use of the word 'assessee' in the sentence 'the I. T. O. shall serve' on the assessee a notice of demand', must refer to the administrator or personal representative of the deceased person, so that one is compelled to give to the word 'assessee' different meanings in different parts of the same section."

HEIRS OF A DECEASED PERSON IF ASSESSEES.

When tax is payable by a demand notice, the person is to be deemed an assessee on whom the said notice is served. So a tax-paying person is strictly speaking an assessee. Thus a person cannot be held to be an assessee in its strict sense before an assessment is made. If liability to pay tax is the criterion of an assessee, person assessed at nil cannot be treated as assessee when the assessment is completed. When notice under sections 22 and 23 is served on any person, such

persons may be technically taken as assessee but as soon as they are assessed at nil they cannot be treated as assessee. A person assessed at nil may prefer an appeal and before the appellate court he is described as an applicant or petitioner. Under section 46 of the Act an heir is an assessee so far as realisation of tax of the estate of the deceased person is concerned; but that does not entitle the heir to have any *locus standi* of an assessee to contest the assessment as reported in the case of *Mitchel v. Macneil*, 31 C. W. N. 630, decided by the Calcutta High Court. The case of *Gorinda Swaran*, 105 I. C. 536, lays down by an obiter that the estate of a deceased person is an assessee for the purpose of claiming any refund. The Patna High Court in the matter of *Maharaja of Darbhanga*, A. I. R. 1930 Pat. 81, allowed the heirs to be substituted.

It seems to me highly inequitable not to allow an heir of the deceased assessee to step in the place of an assessee with equal rights and liabilities. When heirs are allowed to be substituted and when appeals can be entertained when filed by the heirs, it does not stand to reason why these privileges should be withheld to heirs applying under section 27 of the Act. Either the term "assessee" should be used in a general or a particular sense and not according to convenience. The incorporation of section 24B rather arms the I. T. O. to assess and realise tax due by the deceased. It does not give any special privilege to the heirs so far as petition u/s 27 is concerned, except the rights and liabilities as enjoined u/s 24B (2).

LIMITATION FOR THE RECOVERY OF ARREAR DEMAND.

Under section 46(7) no proceedings for recovery can be commenced after the expiration of one year from the last day of the year in which the demand is made with the exception of the special case referred to in sub-section (1) of section 42 which relates to non-residents.

47. Any sum imposed by way of penalty under the provisions of sub-section (2) of section 25, section 28 or sub-section (1) of section 46, shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax.

Recovery of penalties.

NOTES.

Section 47 is governed by the preceding section 46 and recovery of penalty, if any, is to be made as prescribed under section 46.

CHAPTER VII.

Refunds.

48. (1) If a shareholder in a company who has received any dividend therefrom

Refunds. satisfies the Income-tax Officer or other authority appointed by the Governor General in Council in this behalf that the rate of income-tax applicable to the profits or gains of the company at the time of the declaration of such dividend is greater than the rate applicable to his total income of the year in which such dividend was declared or that his total income in such year is below the minimum chargeable with income-tax he shall, no production of the certificate received by him under the provisions of section 20, be entitled to a refund on the amount of such dividend (including the amount of the tax thereon) calculated at the difference between those rates or at the rate applicable to the profits and gains of the company at the time of the declaration of such dividend, as the case may be.

(2) If a member of a registered firm or any person who being a minor has been admitted to the benefits of partnership in such firm satisfies the Income-tax Officer or other authority appointed by the Governor General in Council in this behalf that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been levied on the profits or gains of the firm of that year or that his total income of the previous year was below the minimum chargeable with income-tax, he shall be entitled to a refund on his share of those profits or gains calculated at the difference between those rates or at the rate at which income-tax has been levied, as the case may be.

(3) If the owner of a security from the interest on which, or any person from whose salary, income-tax has been deducted in accordance with the provisions of section 18, satisfies the Income-tax Officer or other authority appointed by the Governor General in Council in this behalf that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been charged in making such deduction in that year or that his total income of the previous year was below the minimum chargeable with income-tax, he shall be entitled to a refund on the amount of interest or salary from which such deduction has been made calculated at the difference between those rates or at the rate at which income-tax has been deducted, as the case may be.

(4) For the purposes of this section, 'total income' includes, in the case of any person not resident in British India, all income, profits and gains wherever arising, accruing or received, which, if arising, accruing or received in British India, would be included in the computation of total income under section 16.

(5) Nothing in this section shall entitle to any refund any person not resident in British India who is neither a British subject as defined in section 27 of the British Nationality and Status of Aliens Act, 1914, nor a subject of a State in India.

REFUNDS OF INCOME-TAX

Refunds are necessitated owing to the system of taxation at the source, which occurs in the case of the tax on companies and on registered firms [section 48(1) and (2)], and of deduction at the source, which occurs in the case of "interest on securities" and "salaries" [section 48(3)]. In both these cases the rate of tax appropriate to the "total income" of the recipient (the shareholder, partner, security-holder or salaried person) is not known at the time that the tax is assessed or deducted. As stated in paragraph 61, in order to simplify the procedure in connection with refunds section 18(9) makes it obligatory upon the person deducting income-tax from "interest on securities" to issue to all security-holders a certificate specifying the amount of the tax deducted from the interest and the rate at which it has been deducted; and similarly section 20 (*see* paragraph 63) requires the principal officer of a company

distributing dividends to issue to shareholders a certificate stating that the company has paid or will pay income-tax on the profits that are being distributed. These certificates (or in the case mentioned in paragraph 62, a certificate by a bank) must ordinarily be accepted by the Income-tax Officers as conclusive proof that tax has been paid.

Where interest on securities is paid to estates vested in the Administrator General or the Official Trustee and where the beneficiaries and their shares are known, the beneficiaries are to apply for refund under section 48 (3); but where the beneficiaries and the share of each in the estate are not known, the estate as a whole should be regarded as a separate unit and the Administrator General or the Official Trustee, in whom it is vested should be regarded as the "owner of the securities" for the time being for the purposes of section 48 (3) and he may apply for such refunds.

A minor who has been admitted to the benefits of a partnership cannot have the status of a member of a registered firm for the purposes of sub-section (2) of section 48 and no claim can therefore be made on his behalf to any refund under that section in respect of his share of the profits of a registered firm.

The powers of an Income-tax Officer in respect of refunds can be exercised by any other authority appointed by the Governor General in Council in this behalf under section 48.

For the reasons given in paragraph 63, the Income-tax Officer, for purposes of refunds in the case of dividends, has to assume that the dividends mentioned in the certificate were taxed at the maximum rate current on the date when the dividends were declared. In the case of both dividends and interest on securities, the tax deducted has to be added to the "net" dividend or interest paid for the purpose of calculating both the "total income" of the applicant and the amount of refund due. [See paragraph 57, and section 48(1)].

A company, a substantial portion of whose income is known to be derived from tax-free securities, should be required to certify, as the statutory form prescribed in rule 14 provides, what percentage of its income in a given year has actually paid tax or is liable to pay tax; and if a share-holder received a dividend from a company that derives a substantial portion of its income from tax-free securities, the shareholder should only be allowed a refund under section 48 in respect of a proportion of his dividend corresponding to the proportion of the company's income that is subject to tax.

When the amount distributed by a company as dividends exceeds the total income, profits or gains as calculated for

income-tax purposes of the company in the year in question, taxed and untaxed, which includes cases where there is no income, profits or gains, or a loss (for example, when net receipts from non-tax-free sources are wiped out or exceeded by the depreciation allowance) the refunds to shareholders should be calculated with reference to the proportion borne by the tax-free income to the total amount distributed less the tax-free income.

Application for refund under the provisions of rule 39 should, in cases where the applicant is resident in British India, be made to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax or where he is not chargeable directly to income-tax, to the Income-tax Officer of the district in which he ordinarily resides and such Income-tax Officers are required to give the refunds. In cases where the applicant is resident outside British India, the application should be made to the Income-tax Officer, Non-Residents Refund Circle, Bombay. The Income-tax Officer will, however allow a claimant who resides in an Indian State, the option of receiving payment of the refund through the Political Officer in that State, that is to say, the refund voucher that will be issued by the Income-tax Officer will be made payable, if the person applying for the refund so desire, at the Political Treasury of the Government of India in the particular Indian State, or if there is no treasury under the control of the Political Officer, at the prescribed British Indian Treasury.

The necessity for refunds of tax on Government securities can be avoided by the procedure laid down in paragraph 61, in the case of persons who are either not liable to the tax or who have a taxable income which is sufficiently stable to justify the Income-tax Officer in assuming that the rate applicable to the total income is not likely to move from one grade to another. Again, as has been pointed out in preceding paragraphs, the necessity for a refund can also be avoided in the case of persons who have income which has not been taxed, or from which income-tax has not been deducted, at the source, since such persons can claim a set-off against the tax due on that other income

In cases where a cash refund is necessary, the procedure laid down in rules 36 to 39 should facilitate the granting of refunds. The application must be made in the form prescribed in rule 36 by persons resident in British India and in that prescribed in rule 36-A by persons not resident in British India and verified in the manner laid down in those rules and must, under rule 37 or 37-A, be accompanied by a return of the "total income" in the form prescribed in rule 19 unless such a return has previously been made or that prescribed in rule

37-A as the case may be. A false statement in such a return or in such a verification is punishable under the provisions of section 182 of the Indian Penal Code, which are set out in paragraph 68 above. The application must also, where necessary, be accompanied by the certificates mentioned in section 18(9) or section 20. The applications, under rule 40, need not be presented in person, but may be sent by post or by an authorised agent.

Where the applicants reside in India, instead of issuing a refund order payable at a treasury or a branch of the Imperial Bank of India, the amount of refund due may be remitted by money order if the Income-tax Officer concerned is satisfied that this course is more convenient. In that event, the cost of the money order will be borne by Government and should not be deducted from the amount to be refunded. If the applicants reside out of India, the amount of refund under section 48 or 49 of the Act will be remitted to them by bank draft or money order at their cost unless they appoint agents to receive payment in India.

It should be particularly noted that section 48 does not apply to super-tax (*see* section 58) since super-tax is not deducted at the source or taxed at the source with the solitary exception of the case referred to in section 57, in which case no claim for any refund can arise.

Under sub-sections (4) and (5) of this section refunds to non-residents, who are neither British subjects nor subjects of Indian States, are not admissible. Refunds to non-residents, who are British subjects or subjects of Indian States, are to be made with reference to their entire income both in and outside British India, which would be liable to Indian income-tax if it accrued or arose or was received in British India. The total income thus computed will, of course, include income from agriculture conducted outside British India.

The onus of proving the claim to refund (and therefore of adducing satisfactory evidence of his total income) of course lies on the claimant, and if he fails to discharge it his claim should be rejected. It is not necessary, however, for the purpose of such claims to do more than ascertain the grade of tax applicable, or to compute the total income exactly. Certificates by Income-tax authorities in the United Kingdom or a dominion should be accepted as proof of the amount of the total income. Certificates of responsible officials in Indian States should also be accepted in support of claims presented by subjects of Indian States.

The Act and the rules thereunder permit of a refund application and the accompanying return of total income being signed and presented by a duly authorised agent, on behalf of

his non-resident principal. In fact such agents may carry out the entire transactions in the matter of refunds for their principals.

Sub-sections (4) and (5) of this section should be applied, irrespective of when the income in respect of which a refund is claimed accrued, arose or was received, to all claims under this section presented on or after April 1st, 1928. They should not be applied to claims presented but not disposed of before 1st April 1928. (Para 92 of the I. T. M.).

LIMITATION.

Limitation for a claim to refund in the case of a direct assessee is the last day of the financial year in which tax was deducted at source or the assessee was assessed whereas in the case of an indirect assessee, limitation runs from the last day of the calendar year.

REFUND UNDER DIFFERENT HEADS.

Refunds may be claimed by an assessee where tax is collected at the source, *e.g.*, in case of dividends, interest and securities and salaries. Refunds may also be due to a partner of a registered firm when taxed at the maximum rate where the income of the firm does not justify the rate applicable to the partners. It is essential to note that question of refund can arise only when there is a difference in the rates of the tax. No refund can be claimed by an applicant having indirect share in the firm or in the company *In re: A. L. A. R. v. Commissioner of Income tax, Madras* (unreported).

REFUNDS TO NON-RESIDENTS.

Non-residents also can claim refunds, and such application must be presented in the prescribed form to the Income-tax Officer, Non-residents Refund Circle, Bombay. But under sections 4 and 5 refunds to such persons who are non-British subjects and non-Indian State subjects are not admissible at all.

TOTAL INCOME—REFUNDS.

So far as non-resident is concerned, refunds are to be allowed after taking into consideration the entire income both in and outside British India, where such income accrues or arises or was received in British India. This total income includes agricultural receipts outside British India.

APPEAL.

No appeal is maintainable against an order refusing a petition for refund.

DECEASED PERSON'S ESTATE.

In the matter of Mitchell v. Macneil, 31 C. W. N. 630, it was

held that a refund cannot be claimed where payment is a voluntary one. But in the case of *Govinda Sawaran*, 105 I. C. 536 there is an observation to the effect that where tax is leviable from an estate of a deceased person, such estate is competent to claim refund. The estate of a deceased person is not liable to be assessed to income-tax and section 48(2) of the Act cannot apply to a person who died before the assessment on his own income was made. A person who did not deposit as assessee, income-tax, is not allowed to claim refund—*Zenab bai v. Secretary of State*, 136 I. C. 819 (*vide also S. M. Hajee Sulaiman & sons v. S. B. Neogi*, A. I. R. 1932 R. 56).

But the new section 49B has vested representative of the deceased person, with power to make claim on his behalf.

PREScribed FORM FOR APPLICATION.

Rule 36 lays down : "in the case of a person resident in British India, an application for a refund of Income-tax under section 48 of the Act shall be made according to the prescribed form.

(For prescribed form under section 38 *vide Rules portion*.)

RULE 37.

The application under rule 36 shall be accompanied by return of total income in the form prescribed under section 22 unless the applicant has already made such a return to the Income-tax Officer.

RULE 37A.

The application under rule 36A (*vide rules portions*) shall be accompanied by a return of total income in the prescribed form.

RULE 38.

Where the application under rule 36 or rule 36A, is made in respect of interest on securities or dividend from companies, the application shall be accompanied by the Certificate prescribed under section 18(9) or section 20 as the case may be.

RULE 39.

The application under rule 36 or rule 36A shall be made as follows :—

- (a) if the applicant is resident in British India, to the Income-tax Officer of the District in which the applicant is chargeable directly to income-tax or if he is not chargeable directly to income-tax, to the Income-tax Officer of the district in which he ordinarily resides ;

- (b) if the applicant is a resident outside British India, to the Income-tax Officer appointed by the Central Board of Revenue.

EFFECT OF THE AMENDMENTS.

The provisions of the Act relating to refunds were defective in many respects. At present specific provision for refunds is made, where tax has been recovered by deduction at source at too high a rate, and adjustments in the course of assessment are not provided for. It was also held that before this amendment, the Act made no provision for refund to a person (a) whose income was below the taxable limit or (b) who had no income directly taxable in India, but who might have suffered tax by deduction at source.

The amendments to section 48 are aimed at remedying these defects in the case of persons to whom the rate of tax applicable is nil, or who are admitted to the benefits of partnership in a registered firm but are not partners.

48A. (1) If in any case not provided for by section 48 or by the provisions relating to refunds elsewhere contained in this Act the Income-tax Officer is satisfied, upon claim made in this behalf, that tax has been paid by or on behalf of any person with which he was not properly chargeable or which was in excess of the amount with which he was properly chargeable, the Income-tax Officer shall allow a refund to such person of the amount so paid or so paid in excess.

(2) The assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision if satisfied to the like effect shall in like manner cause a refund to be made by the Income-tax Officer of any amount found to have been wrongly paid or paid in excess.

(3) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision, or where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief.

IMPLICATIONS.

The new section 48A gives a general power to the Income-tax authorities to make refunds, whether during the original assessment or thereafter by the I. T. O., or during other proceedings under the Act (*e.g.* appeal or review.)

The power to make refunds has been much enlarged. Section 48A invests the taxing authorities with a general power to make refunds, if they are satisfied upon claim made in this behalf or on behalf of any person with which he was not properly chargeable or which was in excess of the amount with which he was properly chargeable.

49. (1) If any person who has paid Indian Income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid United Kingdom income-tax for that year in respect of the same part of his income, and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax and the rate at which he was entitled to, and obtained, relief under that section :

Provided that the rate at which the refund is to be given shall not exceed one-half of the Indian rate of tax.

(2) In sub-section (1)—

- (a) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act ;
- (b) the expression "Indian rate of tax" means the amount of the Indian income-tax divided by the income on which it was charged ; and
- (c) the expression "United Kingdom income-tax" means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts.

RELIEF FROM DOUBLE INCOME-TAX OF INCOMES TAXED IN BRITISH INDIA AND THE UNITED KINGDOM (SECTION 49.)

At a conference between the representatives of the Home Government and of the Dominion and of India an agreement was arrived at to the following effect: That in respect of income taxed both in the United Kingdom and in India there should be deducted from the appropriate rate of the United Kingdom income-tax (including super-tax), the whole of the rate of the Indian Income-tax (including super-tax), charged in respect of the same income, subject to the limitation that in no cases should the maximum rate of relief given by the United Kingdom exceed one-half of the rate of the United Kingdom income-tax (including super-tax) to which the individual tax-payer might be liable and that any further relief necessary in order to confer on the tax-payer relief amounting to the lower of the two-taxes (United Kingdom and Indian) should be given by India. That is to say the arrangement is that where income is liable to taxation both in the United Kingdom and in India, it should pay only at the highest rate-leviable in either country. The proposals have been accepted by the Government of the United Kingdom and are embodied in section 27 of the Finance Act of 1920. A copy of that section is given below.

* * * * *

27. (1) If any person who has paid by deduction or otherwise or is liable to pay United Kingdom income-tax for any year of assessment on any part of his income proves to the satisfaction of the Special Commissioners that he has paid Dominion income-tax for that year in respect of the same part of his income, he shall be entitled to relief from United Kingdom Income-tax paid or payable by him on that part of his income at a rate thereon to be determined as follows:—

- (a) if the Dominion rate of tax does not exceed one-half of the appropriate rate of the United Kingdom tax, the rate at which relief is to be given shall be Dominion rate of tax ;
- (b) in any other case the rate at which relief is to be given shall be one-half of the appropriate rate of the United Kingdom tax.

For the purpose of this section, the expression “the appropriate rate of United Kingdom tax” means the rate at which the claimant for the year to which the claim relates has borne or is liable to bear United Kingdom income-tax and when the claimant is liable to United Kingdom super-tax, the expression “the appropriate rate of United Kingdom tax” means a

rate equal to the sum of the rates at which he has borne or is liable to bear United Kingdom Income-tax and Super-tax, respectively, for that year.

(2) Where a person has not established his claim to relief under this section for any year of assessment before the first day of January in that year, the relief shall be granted by way of repayment of tax.

(3) Where by reason of the allowance of relief under this section the rate of United Kingdom income-tax deducted from or paid in respect of any part of the income of any individual is less than the standard rate and the rate of the relief so allowed is greater than the rate appropriate to the case of that individual, such an adjustment shall be made in allowing to that individual any relief to which he may be entitled under the provisions of this part of this Act relating to the rate of tax on the first two hundred and twenty-five pounds of taxable income as may be necessary to secure that the amount of United Kingdom income-tax finally paid or borne by him shall be equal to the amount which would have been paid or borne if the relief under this section had in the first instance been given at the rate appropriate to his case.

(4) Notwithstanding anything in the Rules applicable to Case IV or Case V of Schedule D or in any other provision of the Income-tax Act, no deduction shall be made on account of the payment of Dominion income-tax in estimating income for the purpose of United Kingdom income-tax, and where income-tax has been paid or is payable in any Dominion either on the income out of which income subject to United Kingdom Income-tax arises or is received, or as a direct charge in respect of that income, the income so subject to United Kingdom income-tax shall be deemed to be income arising or received after deduction of Dominion income-tax and an addition shall, in estimating income for the purposes of the United Kingdom income-tax, be made to that income of the proportionate part of the income-tax paid or payable in the Dominion in respect of the income out of which that income arises or is received together with the full amount of any Dominion income-tax directly charged or chargeable in the Dominion in proportion of that income :

Provided that—

(a) where any income arising or received as aforesaid consists of dividends which are entrusted to any person in the United Kingdom for payment and the Special Commissioners are satisfied that the person so entrusted is not in a position to ascertain the amount of the addition to be made under

this sub-section, the assessment and charge may be made on the amount of the dividends as received by the person so entrusted, but in any such case the amount of the addition shall be chargeable on the recipient of the dividends under case VI of Schedule D ; and

- (b) Where under the laws in force in any Dominion no provision is made for the allowance of relief from Dominion income-tax in respect of the payment of United Kingdom Income-tax, then in assessing or charging income-tax in the United Kingdom in respect of income assessed or charged to income-tax in that Dominion deduction shall be allowed in estimating income for the purpose of United Kingdom income-tax of an amount equal to the difference between the amount of the Dominion Income-tax paid or payable in respect of the income and the total amount of the relief granted from the United Kingdom Income-tax in respect of the Dominion Income-tax for the period on the income of which the assessment or charge to United Kingdom income-tax is computed.

In this sub-section the expression "dividends" includes any interest, annuities, dividends, share of annuities, pensions, or other annul payments or sums in respect of which tax is charged under the Rules applicable to Schedule or under Rule VII of the Miscellaneous Rules applicable to Schedule D.

(5) Where under Rule 20 of the General Rules applicable to Schedules A, B, C, D and E, a body of persons is entitled to deduct income-tax from any dividends, tax shall not in any case be deducted at a rate exceeding the rate of the United Kingdom income-tax as reduced by any relief from that tax given under this section in respect of any payment of Dominion income-tax.

(6) Where under the law in force in any Dominion provision is made for the allowance of relief from Dominion income-tax in respect of the payment of United Kingdom income-tax the obligation as to secrecy imposed by the Income-tax Acts upon persons employed in relation to Inland Revenue shall not prevent the disclosure to the authorised officer of the Government of the Dominion of such facts as may be necessary to enable the proper relief to be given in cases when relief is claimed both from United Kingdom income-tax and Dominion income-tax.

(7) The Commissioners of Inland Revenue may from time to time, make regulations generally for carrying out the pro

visions of this section, and may, in particular, by those regulations provide :—

- (a) for making such arrangements with the Government of any Dominion to which the last preceding subsection applies as may be necessary to enable the appropriate relief to be granted ;
 - (b) for prescribing the year which in relation to any Dominion income-tax is, for the purposes of relief under the section, to be taken as corresponding to the year of assessment for the purpose of United Kingdom income-tax.
- (8) In this section :—
- (a) The expression “Dominion” means any British possession, or any territory which is under His Majesty’s protection or in respect of which a mandate being exercised by the Government of any part of His Majesty’s dominions ;
 - (b) The expressions “Unite Kingdom income-tax” and, “United Kingdom super-tax” mean respectively income-tax and super-tax chargeable in accordance with the provision of the Income-tax Act :
 - (c) The expression “Dominion income-tax” means any income-tax or super-tax charged under any law in force in any Dominion, if that tax appears to the Special Commissioners to correspond with the United Kingdom Income-tax or super-tax ;
 - (d) The expression “Dominion rate of tax” means the rate determined by dividing the amount of the Dominion income-tax paid for the year by the amount of the income in respect of which the Dominion income-tax is charged for that year, except that where the Dominion income-tax is charged on an amount other than the ascertained amount of the actual profits. The Dominion rate of tax for the purposes of this section shall be determined by the Special Commissioners.

For the purpose of this section, the rate of United Kingdom Income-tax shall be ascertained by dividing by the amount of the taxable income of the person concerned the amount of tax payable by that person on that income before deduction of any relief granted in respect of life assurance premiums or any relief granted under the provisions of this section, and the rate of United Kingdom super-tax shall be ascertained by dividing the amount of the super-tax payable by any person

by the amount of that person's total income from all sources as estimated for super-tax purposes.

* * * * *

Under that section a person whose income is assessed both in the United Kingdom and in India is entitled to claim from the authorities of the United Kingdom a refund or rebate of the rate levied in India up to one-half of the English rate.

Section 49 of the Indian Income-tax Act, therefore, provides that where any further relief is to be given in order to secure that such a person shall not pay a higher rate than the highest rate in either country, such relief will be given by India, subject to the limitation that the relief given in India shall not exceed half on the rate of income-tax and super-tax combined. Up to the year 1921-22 the Indian rates of income-tax and super-tax combined were less than half the rates in the United Kingdom, and, therefore, no claim can be made under this section in respect of tax levied up to that year. Relief can only be claimed in India, when, owing to any alteration in the rate, the Indian rate is more than half the English rate, and the amount of relief would merely be the amount by which the Indian rate exceeds half the English rate. The rates prescribed in India in some cases now amount to more than half the English rates as fixed for the year 1930-1. The table below shows the amount of English income-tax and super-tax and the effective rate per rupee contrasted with similar figures for the Indian rates.

English.				Indian.			
Income.	Income-tax.	Super-tax.	Effective rate per rupee.	Income-tax.	Super-tax.	Effective rate per rupee.	
Rs.	Rs.	Rs. A.	Rs. A. P.	Rs. A.	Rs. A.	Rs. A. P.	
25,000	6,250	...	0	3,092	7	0	11½
30,000	7,500	183	1½	4,492	3	0	4½
45,000	11,250	1,375	4	7,324	4	0	2
60,000	15,000	3,392	10	9,765	10	0	3
75,000	18,750	6,096	10½	12,207	1	0	4½
90,000	22,500	9,288	11	14,648	7	0	6½
1,05,000	26,250	12,558	11	17,773	7	0	11½
1,30,000	30,000	16,592	0	20,312	8	0	8½
1,55,000	33,750	20,762	0	22,851	9	0	10½
1,80,000	37,500	25,300	0	25,390	10	0	11½
2,05,000	56,250	48,675	5	38,086	0	0	1
3,00,000	75,000	74,342	0	50,781	5	0	7½
4,50,000	1,12,500	1,29,342	0	76,171	15	0	1½
6,00,000	1,50,000	1,87,092	0	1,01,562	11	0	0½
(Companies	...	...	0 4 0	...	...	0 3 11½	

NOTE.—The allowances and abatements allowed by the United Kingdom Income-tax Act have not been taken into account in working out the figures of United Kingdom income-tax in the table. The income-tax and surtax have also been assumed to be charged on the same income. The figures are therefore only useful as generally indicating the relative rates of taxation in the two countries.

It will be observed that the Indian rate for individuals and firms is *less* than half the English rate up to an income of about Rs. 25,000. Persons with such incomes which are wholly taxed both in the United Kingdom and in India can, therefore, claim a refund or rebate of the whole of the Indian rate to be set against the English rate from the authorities in England and there will be no claim to relief in India. The Indian rate for an income of Rs. 60,000 is *more* than half the English rate and a person who has paid income-tax both in the United Kingdom and in India on this income, could claim a refund from the English authorities of a sum equivalent to 2 annas $\frac{1}{2}$ pies per rupee on his assessed income and thereafter could claim from the Indian Income-tax authorities a refund of $4\frac{1}{2}$ pies per rupee of his assessed income. An assessee must have obtained relief from the authorities in the United Kingdom and must prove that he has done so and at what rate the relief was granted before any relief can be given to him in India. For limitation of the claims for refund see paragraph 95-B.

It is necessary to emphasise the fact that the relief under this section proceeds and is based upon a comparison of the rate of tax in India with the rate of tax in the United Kingdom and not of the comparative amounts of tax paid in either country. That is to say, what is compared is the rate of the Indian tax paid by the claimant for the Indian year of assessment corresponding to the United Kingdom year of assessment in respect of the part of the claimant's income liable to United Kingdom tax and not the particular amount of such part of his income liable to United Kingdom income-tax as is charged to Indian income-tax. The rate of Indian income-tax paid in respect of the part of the income in question having been ascertained, the relief from United Kingdom income-tax is granted on that part of the income as charged to United Kingdom income-tax for that year of assessment, irrespective of the fact that the amount of the United Kingdom assessment may be greater or less than the amount of the Indian assessment for the corresponding Indian year of assessment or that the amount of relief may fall short of or exceed the amount of Indian tax actually paid. In other words, under this system or relief no enquiry is made in the United Kingdom into any differences of basis of computation under the Indian and United Kingdom rules of assessment, provided that it is clear that from whatever source he derives the income on which he claims relief, the claimant has paid (for the Indian year of assessment corresponding to the United Kingdom year of assessment for which relief is claimed) Indian tax in respect of his income from that source, however that income may have been computed for the purposes of assessment to the Indian tax; and the procedure in India in determining the balance of

relief to be given in this country proceeds in exactly the same way.

This system of relief is one that was deliberately adopted at the conference, the principle followed being summarised as follows in the report of the United Kingdom Royal Commission, *viz*:—

“That there will be no interference either by the United Kingdom or by a Dominion with the basis of assessment adopted by any other part of the Empire, and further that the settlement should be independent of increases and decreases in rate of tax and alteration in the basis of assessment whether in the United Kingdom or in the Dominions. This intention is clearly illustrated by the following examples which are given in the report.

Example 1.—*A*, a British resident, derives a fluctuating unearned income directly from a Dominion whose rate of tax applied to that income is 1s. 6d. in the £. *A* has no other income, and his rate of tax in the United Kingdom varies according to the amount of his income. The following figures illustrate the position:—

			United Kingdom.	Dominion.
1st year.				
Tax before relief	...	...	£1,000 at 3s. 9d.	£600 at 1s. 6d.
Relief	...	...	£1,000 at 1s. 6d.	Nil.
Tax after relief	...	...	£1,000 at 2s. 3d.	£600 at 1s. 6d.
2nd year.				
Tax before relief	...	...	£900 at 3s. 6d.	£900 at 1s. 6d.
Relief	...	...	£300 at 1s. 0d.	Nil.
Tax after relief	...	...	£900 at 1s. 6d.	£900 at 1s. 6d.

In this example, although it was the same description of income assessed each year, there were wide variations in the amounts assessed in the United Kingdom and in the Dominion. This might happen owing to different methods of computing taxable profit, and the differences are intentionally exaggerated to illustrate the principles to be followed.

Example 2.—*B* is a British resident receiving as shareholder an income of £900 from a British company *C* which derives the whole of its income from a Dominion. In the first place relief will be given to the Company *C*, and in order to illustrate how this is done, let it be assumed that the company's profits as calculated for the United Kingdom tax are £60,000,

and as calculated for Dominion tax £50,000. Adjustment will be made to the company as follows:—

	United Kingdom.	Dominion.
Tax before relief	£60,000 at 6s. 0d.	£50,000 at 1s. 6d.
Relief	£60,000 at 1s. 6d.	Nil.
Tax after relief	£60,000 at 4s. 6d.	£50,000 at 1s. 6d.

The Company when paying the dividend to *B*, would deduct 4s. 6d. in the £ United Kingdom tax, and intimate on the dividend warrant that the relief in respect of double income-tax was 1s. 6d. in the £.

Let it be assumed that *B*'s dividend of £900 is his total income, so that his proper rate of charge to United Kingdom income-tax is 3s. 9d. He has suffered Dominion tax to the extent of 1s. 6d. in the £, and his ultimate rate of United Kingdom income-tax is 2s. 3d. in the £ (3s. 9d. less 1s. 6d.), but he has suffered by deduction 4s. 6d. in the £ and he will accordingly be repaid 4s. 6d. minus 2s. 3d. in the £ on £900.

Example 3.—*D* is a British resident receiving £900 from company *C*, but he has other income arising in the United Kingdom, and his combined rate of income-tax and super-tax is 7s. 6d. in the £. He is entitled, therefore, to double income-tax relief up to a maximum of 3s. 9d. but the whole of the Dominion tax (1s. 6d. in the £) has already been allowed to the company *C*, who deduct 4s. 6d. United Kingdom tax on payment of the dividends, and no further relief is due. *D* will, therefore, be assessable in respect of the £900 at 1s. 6d. in the £, *viz.*, 7s. 6d. less 4s. 6d., United Kingdom tax deducted, and 1s. 6d. Dominion tax.

It will be noted that in the table mentioned before the amount of relief which a company can get under the English Act is at the rate of 1 anna and 9'6 pies in the rupee and that the amount which they can claim from the Indian authorities will be at a rate of 9'4 pies in the rupee. The reason for the comparative high rates in India as compared with the United Kingdom of the tax on companies is that the Indian rate includes the super-tax on companies while the English rate does not include the United Kingdom Corporation tax. At the same time it must be noted that the Indian rate of 2 annas and 7 pies given in the table for companies is a rate which in actual practice will never be reached. It includes the 1 anna and 7 pies income-tax rate and the flat rate of 1 anna for super-tax; but the flat rate of 1 anna is never charged on the whole

of the assessable income but only on the portion of the income in excess of Rs. 50,000. The rate for the portion of the income below Rs. 50,000 is nil. In order to get at the comparative rate, the tax paid by the company has to be divided by its total income. Thus in the case of a company with a profit of 1 lakh the comparative rate would merely be 2 annas and 1 pie while the rate in the case of a company with a profit of 2 lakhs, it would merely be 2 annas and 4 pies. In both cases a relief of 1 anna 9'6 pies in the rupee would be obtained in the United Kingdom and the balance in India.

In order to obtain relief in India a claimant is required to supply the official receipt for the United Kingdom income-tax paid, the notice of assessment in particular showing the basis on which the liability has been computed and a certificate of the income-tax authorities showing what relief has actually been granted to him in the United Kingdom.

The following are further examples illustrating the method to be adopted in calculating relief due under section 49 of the Act :—

Example 1.—A, a married man with one child is resident in the United Kingdom. He has a fixed income of Rs. 10,500 from property in India and has no other income, his liability to tax is :—

In the United Kingdom.				In India.
			Rs. a. p.	
Assessable income	...	...	10,500- 0- 0	Income-tax on Rs. 10,500 at 9 pies in the Re. 492-3-0.
Less personal allowance	Rs. 3,375	...		
Deduction for Child	...	900	4,275- 0- 0	
Taxable income	...	...	6,225- 0- 0	
Tax on the 1st Rs. 3,750 at As. 1½				
in the rupee			375- 0- 0	
Tax on balance Rs. 2,475 at As. 3½				
in the rupee			556-14- 0	
*Total tax (before relief in respect of Indian income-tax)	...	...	931-14-0	

The United Kingdom tax (Rs. 931-14-0), divided by the taxable income (Rs. 6,225) gives an "appropriate rate of United Kingdom tax" of approximately 2 annas 4'7 pies. A has paid Indian income-tax in respect of the same income at a rate of 9 pies in the rupee, that is, a rate which is less than half the United Kingdom rate and the relief from United Kingdom tax will, therefore, be a sum equal to the Indian rate on Rs. 6,585.

Example 2.—*B* is a bachelor resident in the United Kingdom with no dependants and has an earned income of £1,000 assessable to United Kingdom income-tax. He has no other income and pays income-tax in India in respect of the income in question. His liability to tax is as follows :—

					United Kingdom.	
					£.	s. d.
Total income	...	...	...	...	1,000	0 0
Less earned income allowance one-sixth of £1,000	...	...	...	...	166	13 4
Assessable income	...	...	...	...	833	6 8
Less Personal Allowance	...	...	...	...	162	0 0
Taxable income	...	...	...	...	671	6 8
Tax on 1st £250 at 2s.	...	...	...	...	25	0 0
Tax on balance £421 at 4s. 6d.	...	...	...	...	94	14 6
*Total tax (before relief in respect of Indian income-tax)	...	...	...	...	119	14 6

*For the purposes of calculating "the appropriate rate of United Kingdom tax" this amount is not to be reduced by any relief granted in respect of life assurance premium.

The tax (£119-14-6) divided by the taxable income (£671) gives an "appropriate rate of the United Kingdom tax" of 3s. 6.8d. or 2.85 annas in the rupee ; Indian income-tax is payable on this income at a rate of 9 pies in the rupee, so that *B* is entitled to get relief from the United Kingdom at the rate of 9 pies in the rupee (that is 11d., in the pound on £671 and there is no balance of relief to be given in India.

Example 3.—*C* is a company, the whole profits of which are taxed both in the United Kingdom and in India. The Indian rate of tax paid by the company is 2 annas and 7 pies in the rupee while the "appropriate rate of United Kingdom tax" for the company is 4s. 6d. in the pound. The company can get relief at the rate of $\frac{2}{3}$ in the pound (or $1\frac{1}{2}$ annas in the rupee) in the United Kingdom and on proof of payment of United Kingdom tax and of the grant of United Kingdom relief can claim from the Income-tax authorities in India the balance of relief, i.e., $9\frac{2}{3}$ pies in the rupee.

Corporation profits tax paid in the United Kingdom should not be deducted from the income taxed in India for the purpose of calculating the relief claimed under section 49.

In considering claims for relief under this section in the case of companies which are assessed separately in India

but jointly in the United Kingdom, and one of which makes a loss and the other a profit, it is necessary to scrutinise the United Kingdom assessment to see how much of the income from each source has been taxed. Since one company has made a loss which has been allowed in the United Kingdom assessment, it is clear that only part of the Indian profits of the other company which has made profit has paid tax in the United Kingdom. It is only on this part that relief is allowable since that part only has suffered double taxation.

This section merely provides for relief from double tax where the same income is assessed to tax both in the United Kingdom and in India. It does not provide for relief in other cases.

93-A. *Relief from double tax of incomes taxed in British India and in the United Kingdom—Method of calculating relief in India.*—The following method should be followed in calculating the “Indian rate of tax”, as defined in section 49 (2) (b) of the Indian Income-tax Act :—

Indian super-tax is charged on the whole of the income, including the Rs. 50,000 that are free of super-tax, since under section 55 of the Indian Income-tax Act, it is said to be “charged” in respect of the “total income”. The result is that the first lakh of income is to be regarded as a single slab charged to super-tax at the effective rate of 6 pies in the rupee.

Thus, for the purpose of double income-tax relief, “doubly charged” income of any amount exceeding Rs. 50,000 can only consist of either—

- (1) income liable to super-tax alone, or
- (2) income liable to both income-tax and super-tax, or
- (3) (a) income liable to both income-tax and super-tax
and (b) income liable to super-tax alone,

i.e., there can at most be only two slabs. There can be no part liable to income-tax alone since no income is exempt from super-tax alone. The whole or a part of the income will, of course, be liable to super-tax alone if the whole or any part of the income is exempt from income-tax but not from super-tax. The relief should be calculated separately on each of the two slabs just mentioned.

This method is that followed by Somerset House.

93-B. *Relief from double tax of incomes taxed in British India and the United Kingdom—Method of calculating relief in India where there are differences in computing taxable income in the two countries.*—In practically all cases the United Kingdom gives relief in respect of the income charged in the United Kingdom whether that be higher or lower than the income

charged in the Dominion. The corollary of this is that Dominions should follow the same principle. The following method should therefore be followed in computing relief in British India :—

- (a) If the income as computed in British India is higher or lower than that computed in the United Kingdom because either (1) particular allowances and deductions such as wear and tear differ in the two countries or (2) the periods of income on which the tax is charged are not identical, relief in British India should be calculated on the income computed in British India.
- (b) If the difference between the incomes charged in the two countries is due to a loss being carried forward in the United Kingdom and not in British India, and if there is no other cause of variation, the income will always be lower in the United Kingdom since the carry forward of losses is not allowed in British India. In such cases relief should not be given in India on the losses carried forward in the United Kingdom.
- (c) If the difference between the incomes charged in the two countries is due to the fact that remittances only are taxed in British India and the whole income in the United Kingdom the remittances alone should be regarded as having suffered double taxation.
- (d) Where a defined part of the income is exempted from tax, or falls altogether outside the scope of the tax in either country, for example, interest on tax-free securities in either country, or agricultural income in British India, relief will not be allowed in respect of the tax on such part of the income. It may be (however) that the exempted or untaxed part of the income is not defined or separable, but forms an element in the income doubly taxed. For example, remittances may be made to the United Kingdom from British Indian income derived from both taxed and tax-free sources in British India, and it may not be possible to say how much is derived from each. In such circumstances relief will be allowed on a part of the remittances proportionate to the part of the income in British India that is derived from sources, subject to tax. The deduction from taxable income allowed in super-tax assessments in British India is not to be treated as exempt from super-tax.

- (e) In the case of tea-gardens, relief will be allowed on the 40 per cent. of the combined agricultural and non-agricultural profits liable to tax in British India.

94. *Relief from double tax of incomes taxed in British India and in the United Kingdom—Procedure.*—The following procedure should be followed for the grant of relief in respect of double taxation in India and in the United Kingdom :—

When during an assessment it is known that an assessee will be entitled to relief on account of double taxation on any part of his income, the amount of the relief may be calculated by the Income-tax Officer so far as is possible, and the assessee may be allowed to pay the demand in two instalments, the second of which will represent the amount of relief calculated to be due. The date of the first instalment will be that ordinarily fixed for the payment of a demand of income-tax, while the second will be payable two or, if possible, three or four months from the date of the notice of demand. If the assessee produces the necessary British certificates and establishes his claim to relief under section 49 of the Indian Income-tax Act, 1922, the demand for the second instalment should be modified by cancellation or reduction or, if the relief is greater than the second instalment and the first instalment has been paid, a refund should be granted.

RELIEF FROM DOUBLE TAX OF INCOMES TAXED IN BRITISH INDIA AND IN INDIAN STATES.

Arrangements have also been made with several Indian States, which levy income-tax, for the grant of relief from the payment of double income-tax of incomes which are taxed both in any of these Indian States and in British India. Relief is granted in British India at a rate equal to half the Indian State rate subject to a maximum of half the British Indian rate. The State will grant relief at a rate equal to half its rate of tax. The following is a copy of the Notification prescribing the procedure to be followed by persons claiming relief from the payment of double income-tax. (Para 95 of the I. T. M.).

FINANCE DEPARTMENT (CENTRAL REVENUES.)

*Notification No. 25, dated the 1st July 1926
(as subsequently amended.)*

In exercise of the powers conferred by section 60 of the Indian Income-tax Act, 1922 (XI of 1922), the Governor-General in Council is pleased to make the following modifications in respect of income-tax, in favour of income on which income-tax has been charged both in British India and in one

of the Indian States referred to in the schedule to this notification (hereinafter called the said schedule) namely :—

1. In this notification—

- (a) the expression “State income-tax” means income-tax and super-tax charged in accordance with the provisions of the law relating to income-tax for the time being in force in the State concerned ;
- (b) the expression “State rate of tax” means the amount of State income-tax divided by the amount of the larger of the two incomes on which income-tax and super tax respectively have been charged by the State ; and
- (c) the expressions “Indian income tax” and “Indian rate of tax” have the same meanings as in clauses (a) and (b), respectively of section 49(2) of the Act.

2. (1) If any person who has paid Indian income-tax for any year on any part of his income, proves to the satisfaction of the Income-tax Officer that he has paid State income-tax in respect of the same part of his income, he shall be entitled to the refund of a sum calculated on that part of his income at a rate equal to half the State rate of tax :

Provided that the rate at which the refund shall be given shall not exceed one-half of the Indian rate of tax.

3. Every application for refund of income-tax under this notification shall be made to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax or if he is not chargeable directly to income-tax, to the Income-tax Officer for the district in which the applicant ordinarily resides, or if he is not resident in British India—

- (i) to the Income-tax Officer of the district or area in which he was last charged directly to income-tax when so resident, or
- (ii) if he has never been so resident, to the Income-tax Officer of the district or area where the income-tax for the refund of which application is made was deducted. Such application may be presented by the applicant in person or by a duly authorised agent or may be sent by post, and shall be in the following form :—

*Application for relief from double income-tax under
Notification No. 25, dated the 1st July 1926.*

I, _____ of _____ do hereby state that
I have paid (name of State) state _____ income-tax
amounting to Rs. _____ income-tax and super-tax
for the year ending 19 _____ on _____

an *income of Rs.

and that Indian $\frac{\text{income-tax}}{\text{income-tax and super-tax}}$ of Rs. has

also been paid on $\frac{\text{the same income}}{\text{part of the same income amounting to Rs.}}$

I now pray for relief at the rate of
amounting to Rs. under Notification No. 25, dated
the 1st July 1926, to which I am entitled. My income from
all sources to which this notification applies during the
"previous year" ending on the 19, amounted to
Rs. only see Return of income $\frac{\text{attached}}{\text{already submitted}}$

Signature

I hereby declare that what is stated herein is correct.

Signature

Dated 19 .

4. No claim to any refund of Indian income-tax under this notification shall be allowed unless it is made within one year from the last day of the year in which such tax or the State income-tax was recovered, whichever is later.

SCHEDULE.

- | | |
|-----------------------|------------------------|
| 1. Baroda | 12. Benares. |
| Madras States Agency. | Eastern States Agency. |
| 2. Travancore. | 13. Baster. |
| Central India Agency. | 14. Kanker. |
| 3. Dhar. | 15. Raigarh. |
| 3A. Makrai. | 16. Jashpur. |
| Punjab States Agency. | 17. Sarangarh. |
| 4. Patiala. | 18. Kawardha. |
| 5. Bhawalpur. | 19. Khairagarh. |
| 6. Jind. | 20. Korea. |
| 7. Kapurthala. | 21. Nandgaon. |
| 8. Loharu. | 22. Chhuikhadan. |
| 8A. Maler Kotla. | 23. Mayurbhanj. |
| 8B. Mandi. | 24. Patna. |
| Bombay. | 24A. Sonpur. |
| 9. Kachin. | 24B. Kalahandi. |
| 10. Akalkot. | 24C. Rairakhol. |
| 11. Phaltan. | 24D. Baudh. |
| 11A. Chhota Udepur. | Punjab. |
| 11B. Ramdurg. | 25. Baghat. |
| United Provinces. | |

(Income-tax Manual.)

*Where the income on which income-tax has been charged differs from that on which super-tax has been charged both amounts be specified.

95-A. *Relief from double tax of incomes taxed in British India and Ceylon.*—As a result of the introduction of income-tax in Ceylon with effect from 1st April 1932, arrangements have been made with the Ceylon Government for the grant of relief in cases where the same income has been subjected to Ceylon tax as well as Indian income-tax. Relief is granted in India to the extent of half the Ceylon tax calculated on that part of the income on which relief is admissible under the Ceylon Income-tax Law or half the Indian income-tax on the same part of the income, whichever is less. It will be observed that relief is based on *amounts* of tax, not on *rates* of tax. The notification prescribing the procedure to be followed by persons claiming relief from double income-tax is reproduced below :

FINANCE DEPARTMENT (CENTRAL REVENUES).

Notification No. 14, dated the 2nd April 1932.

In exercise of the powers conferred by section 60 of the Indian Income-tax Act, 1922 (XI of 1922), the Governor General in Council is pleased to make the following modifications in respect of income-tax in favour of income on which income-tax has been charged both in British India and in Ceylon, namely :—

(1) In this notification—

- (a) the expression “Ceylon tax” has the meaning assigned to it in section 45 (4) (b) of the Ceylon Income-tax Ordinance, 1932 (2 of 1932),
- (b) the expression “Indian Income-tax” has the meaning assigned to it in clause (a) of section 49 (2) of the Indian Income-tax Act, 1922 (XI of 1922).

(2) If any person, who has paid Indian income-tax for any year on any part of his income, proves to the satisfaction of the Income-tax Officer that he has paid Ceylon tax for the corresponding year in Ceylon, he shall be entitled to the refund of a sum equal to half the Ceylon tax calculated on that part of his income on which relief is admissible under the Ceylon Income-tax Law, or to half the Indian income-tax on the same part of his income, whichever is less : Provided that where any person is entitled to a further relief in British India on that part of his income on which relief is admissible under the Ceylon Income-tax Law on account of its having been also taxed in some other country besides Ceylon, the relief in respect of the Ceylon tax shall not exceed the difference between half the Indian income-tax and such further relief as may have been granted in British India owing to that part of his income having been taxed in some other country besides Ceylon.

(3) Every application for refund of income-tax under this notification shall be made to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax or if he is not chargeable directly to income-tax to the Income-tax Officer of the district in which the applicant ordinarily resides, or if he is not resident in British India—

(i) to the Income-tax Officer of the district or area in which he was last charged directly to income-tax when so resident, or

(ii) if he has never been so resident, the Income-tax Officer of the district or area where the income-tax for the refund of which application is made was deducted.

Such application may be presented by the applicant in person or by a duly authorised agent or may be sent by post, and shall be in the following form :—

Application for relief from double income-tax under Notification No. , dated

I, _____ of _____ do hereby state that I have paid Ceylon tax amounting to Rs. _____ for the year ending 19____, on an income of Rs. _____ and that Indian income-tax, income-tax and super-tax of Rs. _____ has also been paid on the same income*¹ part of the same income amounting to Rs. _____. I now pray for relief of a sum of Rs. _____ under Notification No. _____, dated _____ to which I am entitled. My income from all sources to which this Notification applies during the "previous year" ending on the 19____ amounted to Rs. _____ only—see Return of income attached already submitted.

Signature

I hereby declare that what is stated herein is correct.

Signature

Dated _____ 19____.

(4) No claim to any refund of income-tax under this notification shall be allowed unless it is made within one year from the last day of the year in which such tax or the Ceylon tax was recovered whichever is later.

The following points should be borne in mind in regard to the grant of relief in British India in respect of income taxed in British India and in Ceylon.

A.—TAX.

It should be remembered that :—

*Where the income on which income-tax has been charged differs from that on which super-tax has been charged both amounts must be specified.

- (1) Under section 45(4)(b)(1) of the Ordinance, "Ceylon Tax" does not include, for purposes of relief either in India or Ceylon, the additional 2 per cent. charged on non-resident companies under section 20(6) of the Ordinance.
- (2) "Ceylon Tax" does not include, for purposes of relief either in British India or Ceylon, tax on interest or other charges on income included in the Ceylon assessment [Ordinance section 45(4)(b)(ii)].
- (3) "Indian Tax" includes personal Super-tax, both in India and Ceylon.
- (4) "Indian Tax" in India includes Company Super-Tax as regards companies themselves, but not as regards shareholders. Ceylon will adopt the same basis.

B.—"PART OF HIS INCOME" (INDIA).

"HIS INCOME FROM ANY SOURCE" (CEYLON).

Relief of half the smaller tax (both countries).

(1) As the British Indian Notification No. 14 (Finance Department—Central Revenues), dated the 2nd April 1932, is drafted, relief is to be allowed in British India "on that part of the income on which relief is admissible under the Ceylon Income-tax law." The practical result of this is that the expressions "part of his income" in the Indian notification, and "his income from any source" in the Ceylon Ordinance, refer to the same thing, and the British Indian relief is automatically regulated by the Ceylon relief.

The British Indian and Ceylon authorities alike will ignore in granting relief all differences between the computation of the income in the two countries due to—

- (a) Certain expenses being allowed in one country and not in the other.
- (b) The allowances for depreciation being higher in one country than in the other.
- (c) Depreciation being carried forward in one country and not in the other.
- (d) Losses being carried forward in one country and not in the other.
- (e) The fact that assessment is made on the "income arising" in one country and on "remittances" in the other.
- (f) The fact that the assessments are based on different

- (g) Where a Tea Estate is taxed on 40 per cent. of its profits in British India on the whole profits in Ceylon, there will be only one source of income from the Ceylon point of view and the relief allowed in each country will be half the lower amount of tax ignoring this difference in the basis of assessment.

(2) No relief can be given unless tax is paid for the same year in each country on the source in question, *e.g.*, in the first year of a business, tax will be levied on its profits in Ceylon but not in British India: in the year after a business ceases, its profits will be liable to tax in British India but not in Ceylon. No relief can be given in these cases.

C.—“ANY PERSON.”

(1) In Ceylon, the income of married women is treated as that of their husbands. If the wife is separately assessed in British India, on the same income she will be entitled to relief in British India.

(2) *Partnerships*.—Ceylon charges tax on individual partners and not on partnerships at all. No difficulty will arise in British India in regard to registered firms. If partners of an unregistered firm are assessed in Ceylon and the firm is assessed in India, the partners will be entitled to relief in British India and direct assessments should be made on them for the purpose.

SHAREHOLDERS.

(1) A resident in India has dividends from a Company in Ceylon from which Ceylon tax is deducted at source. He is assessed in India on those dividends, as may in certain circumstances happen.

He will be entitled to relief in India.

(2) A resident in Ceylon is a shareholder in an Indian Company and is taxed on its dividends in Ceylon. The Company is taxed only in India. Ceylon will regard him as having suffered Indian tax indirectly. He will be entitled to relief in India.

49-A. Where under any of the provisions of this

Act, a refund is found to be due to any person, the Income-tax Officer, Assistant Commissioner or Commissioner, as the case may be, may, in

lieu of payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due.

SCOPE.

Section 49A gives a general power to make adjustment when a claim for refund is admissible. Thus when an assessment for 1933-34 is remanded and the tax of Rs. 200 already credited stands refundable, the Income-tax Officer during the assessment year 1934-35 can set off Rs. 100/- assessed for that year and allow a refund of Rs. 100/- only if so taxed in the remand case.

The provision has been made for administrative convenience and expediency.

49-B. Where through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause have been entitled to a refund under any of the provisions of this Act, or to make a claim under section 48 or 48-A or 49, is unable to receive such refund or to make such claim, his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

Power of representative of deceased person or person disabled to make claim on his behalf.

IMPLICATIONS.

New section 39B provides for the extension of the right to receive or claim refunds to the representative of deceased persons or person disabled to make claim on his behalf, under section 48 or 48-A or 49 of the Act.

50. No claim to any refund of Income-tax under this Chapter shall be allowed, unless it is made within one year from the last day of the year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the "previous year," as defined in clause (II) of section 2, in which the income arose on which the tax was recovered, whichever period may expire later :

Limitation of claims for refund.

Provided that a claim to refund under section 49 may be admitted after the period of limitation herein prescribed, when the applicant satisfies the Commissioner, or an Assistant Commissioner of Income-tax specially empowered in this behalf by the Central Board of Revenue, that he had sufficient cause for not making the claim within such period.

LAW OF LIMITATION.

Section 50 lays down the rules of limitation applicable to a claim for refund. Such a claim must be made within one year from the last day of the year on receipt by the Government, or such a claim can be made before the close of the financial year after the expiry of the previous year as the case may be. The Income-tax Officer has no authority to extend the period of limitation excepting in the case of non-residents. Once claim is put forward, it does not affect when it is decided. Date of presentation and not the date of disposal should be the criterion of limitation.

In the case of *Baidhanbai Dadu Bhai Kanga*, 3 I. T. C. 76, it was held that an application for refund made on 22nd March 1927, for the year ending 1926 was within time.

APPEAL.

Appeal against any order under section 48 is not maintainable. Section 50 empowers the Commissioner or the Assistant Commissioner, specially appointed for this purpose by the Central Board of Revenue to exercise the original power and such officers may accept the refund petition after expiry of the date where the assessee can show "sufficient cause" within the meaning of section 27. This power is denied to the Income-tax Officer as is apparent from the section itself.

It appears that an assessee should be allowed to prefer an appeal against an order refusing refund simply because when a petition is filed under section 48, the Income-tax Officer is to adjudicate whether refund is allowable or not. Section 33 gives wide power to the Commissioner to review any proceedings which cover the case of refund. Section 31 does not specifically mention that a claim for refund is appealable. But where the order is erroneous it is desirable that the Assistant Commissioner should have power to entertain an appeal against an order refusing refund.

"TAX WAS RECOVERED".

In *In the matter of Binny & Co. v. Commissioner of Income-tax*, 50 Mad. 920, it was held by the Madras High Court that the words "tax was recovered" mean tax was recovered by the Government and not tax was refunded to the assessee. Similarly in the case of *Amrita Lal Gamlihi*, 2 I. T. C. 48, the Judges were of opinion that the income-tax is "recovered when the dividend is paid." It has been pointed out to us that this interpretation may cause hardship in individual cases where there has been delay on the part of the Income-tax authorities in England in making the refund such delay not being due to the default of the assessee; we would point out that this hard-

ship can only be obviated by an amendment of section 50 and we are of opinion that this should be done by giving the Income-tax Commissioner power to extend time in suitable cases.

95-B. Limitation of claims for refund. (Section 50).— Claims for refund are admissible if made within 12 months from the last day of the calendar year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the "previous year" as defined in section 2(11) of the Act in which the income arose on which the tax was recovered, whichever period may expire later. This limitation applies also to refunds of double income-tax (section 49). The date of recovery in this case is, of course, the date of recovery of the tax in India. Since however there is often very great delay in settling assessments and claims to relief in the United Kingdom, provisional claims for double income-tax relief unsupported by proof that relief has actually been obtained in the United Kingdom may be accepted if presented within the limitation period if the assessee definitely undertakes to produce such proof *as soon as* relief in the United Kingdom has actually been obtained. When this undertaking is punctually fulfilled the claim may be treated as one presented in due time. Claims to refund under section 49 may also be admitted after the expiry of the prescribed period, if the applicant satisfies the Commissioner, or an Assistant Commissioner specially empowered in this behalf, that he had sufficient cause for not making the claim within the period.

This section should be interpreted as illustrated below in dealing with claim for refund of tax on dividends. Taking the case of a shareholder in a company which declares a dividend in January 1929, if he is directly assessed and is a person who does not keep accounts, or whose "previous year" is the income-tax year, an adjustment can be made whenever he is assessed in the income-tax year April 1929 to March 1930, while an application for a refund can also be entertained at any time up to 31st December 1930. If he keeps accounts and his "previous year" runs, say, from October to September, an adjustment can be made in the course of assessment during the financial year 1930-31. An application for refund can also be entertained up to 31st March 1931. Where the shareholder keeps accounts on the cash basis, the relevant date is the date of receipt and not the date of declaration, and the foregoing instructions have to be read subject to this modification.

50-A. (1) Any person objecting to a refusal of an Appeal against refusal of refund. Income-tax Officer to allow a claim to a refund under section 48 or 48-A

or 49 or to the amount of the refund made in any such case, may appeal to the Assistant Commissioner.

(2) The appeal shall be presented within thirty days of the date on which the refusal of the refund or the amount of the refund allowed was communicated to the appellant.

(3) The appeal shall be made in the prescribed form and shall be verified in the prescribed manner.

(4) The Assistant Commissioner may, after giving the appellant an opportunity of being heard, pass such orders as he thinks fit.

SCOPE.

Section 50A provides a right of appeal, not previously bestowed by the Act against a refusal to make a refund or against an order allowing a refund of less than the amount claimed.

PROCEDURE.

The appeal shall be made in the prescribed form and duly verified. Limitation will run after expiry of 30 days from the date of communication. The Asst.-Commr. to whom the appeal is filed shall give the appellant an opportunity of being heard.

CHAPTER VIII.

Offences and Penalties.

Failure to make payments or deliver returns or statements or allow inspection.

51. If a person fails without reasonable cause or excuse—

- (a) to deduct and pay any tax as required by section 18 or under sub-section (5) of section 46 ;
- (b) to furnish a certificate required by sub-section (g) of section 18 or by section 20 to be furnished ;
- (c) to furnish in due time any of the returns mentioned in section 19A, section 20A, section 21, section 22, or section 38 ;
- (d) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of section 22, such accounts and documents as are referred to in the notice ; and
- (e) to grant inspection or allow copies to be taken in accordance with the provisions of section 39,

he shall, on conviction before a magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

SCOPE OF SECTION 51.

Section 51 is applicable to cases where there is a failure without reasonable cause or excuse ; where this element is wanting, prosecution can be made.

The Income-tax authorities should therefore be cautious not to haul up a person before the magistracy when they can decide their course of action by asking explanations from such person.

Section 51 does not authorise the Income-tax authorities to prosecute a person for an invalid return or declaration which is not malafide or wilful—*Attorney General v. Till*, 7 T. C. 440.

It is for the magistracy to determine, if the alleged offence complained of, has been committed or not. The jurisdiction of the Magistrate is limited, as section 51 specially mentions of fine and not of imprisonment; and in view of the fact, that Income-tax Act is a General Act, imprisonment is not contemplated in default of fine. Section 25 of the General clauses Act provides realisation of fines in the manner provided by sections 63 to 70 of the Indian Penal Code and section 385 of the Criminal Procedure Code.

Income-tax Officer, before whom an offence u/s 51 is committed, is not competent to proceed against such person, which is alone possible at the instance of the Assistant Commissioner.

NOTES UNDER SECTION 51(a).

Any person required to make a deduction under section 18 who fails to do so, may himself, under sub-section (7) be deemed to be personally in default in respect of the tax; while he is liable to be prosecuted for an offence punishable under section 51(a).

UNDER SECTION 51(b).

Failure to furnish a certificate, e.g., of dividend and interest on securities is punishable under section 51(b).

UNDER SECTION 51(c).

The obligation to make the return is statutory one and no preliminary notice or request from the Income-tax authorities is required. Failure to furnish this return is punishable under section 51(c) of the Act. But so far as notice under section 22(2) is concerned there is no obligation on the part of the assessee to file a return unless he is served with such a notice. If on receipt of such a notice the return is not made by the due date, the assessee is liable under section 51(c) of the Income-tax Act.

Under section 51(d), where an assessee fails to comply with the requisition under section 22(4), he is punishable under this section.

The power to inspect and take copies of such registers is specially conferred by section 39. No Income-tax authorities utilising this special power can be called upon to pay any fee for the inspection of copies under the Companies Act under section 39. Where inspection is refused, he is punishable under section 51(c).

INACCURATE OR INVALID RETURN.

A return may be correct and complete, and the I. T. O. can make an assessment u/s 23(1). An incomplete return is nonetheless a return which may be accepted after scrutiny of accounts ; but an invalid return is no return and an assessee can be made liable u/s 51. Being penalised for an incorrect return does not cast a stigma on the assessee—*Lord Advocate v. A. B.*, 3 I. T. C. 617. A return or statement which is incorrect or contains an innocent omission does not make one liable u/s 51—*Attorney General v. Till*, 7 T. C. 440.

PENALTY UNDER SECTION 28—PROSECUTION.

Under section 28 where a penalty is imposed for a false return, no prosecution should be launched against the assessee for the same offence. But this does not mean that where penalty has been imposed, prosecution under a different head is not permissible. Penalty under one head and prosecution under another can be safely started : *In the matter of Hussainally*, 43 Mad. 493.

52. If a person makes a statement in a verification mentioned in section 19A, or section 20A, or section 22, False statement in or sub-section (2) of section 26A, or declaration. sub-section (3) of section 30 or sub-section (2) of section 32 for sub-section (2) of section 33A, or sub-section (3) of section 50A, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code.

SCOPE.

Return filed by an assessee must be verified in the prescribed form and in the prescribed manner. But in case of false verification the assessee is punishable under section 177 of the Indian Penal Code. Similarly any false statement and verification in a form of appeal is also punishable. But offence under section 52, if any, is committed on the day the return is verified by the party. Verification of untrue statement is the essence of offence. A false declaration either in the return or in the appellate form under the verification clause is similarly punishable : *In the matter of Ganga Sagar*, A. I. R. 1929 All. 919. It applies in terms to false verification made by a person or assessee under certain specified sections. A mere false statement is not sufficient to bring an assessee to book u/s 177 I. P. C. It must be known to be false. The essence of the offence is his knowledge or belief of

falsity. The onus is on the Crown to prove knowledge. A Magistrate who takes cognisance of an offence u/s 52 must have jurisdiction over the place where the verification took place—*In re: Mahudun Pakkiyar Marakayar*, 46 I. L. R. Mad. 839.

Where return is not complete, verification of such return does not constitute an offence. By "not complete" is meant an invalid return—*In re: Ganga Sagar*. 4 I. T. C. 97.

An offence u/s 52 is of a different nature to an offence u/s 51 and an accused cannot be convicted of an offence u/s 51, without calling upon him to meet that charge on his being found not guilty of offence u/s 52. *Champulal Giridharilal*, A. I. R. 1933, N. 358.

53. (1) A person shall not be proceeded against for an offence under section 51 or section 52 except at the instance of the Assistant Commissioner.

(2) The Assistant Commissioner may stay any such proceeding or compound any such offence.

SCOPE.

Sanction of the Assistant Commissioner is a condition precedent before initiating a prosecution under sections 51 and 52. Prosecution for other offences do not require any such sanction.

The Assistant Commissioner is competent to compound an offence where proceedings have been started and not before that. The power of compounding an offence under section 53 is denied to the Income-tax Officer.

COMPOUNDING OFFENCES.

Section 53 expressly mentions that the Assistant Commissioner is alone competent to stay or compound any proceeding. The express mention of one thing implies the exclusion of another and necessarily the Income-tax Officer has no power to compound. But the Assistant Commissioner while compounding an offence must not extort a sum under coercion or intimidation—*In re: Ganga Sagar*, 4 I. T. C. 97.

PROSECUTION.

Income-tax Officer is a public servant and he is competent to prosecute a person who deliberately submits a false return.—*Vide, P. D. Patel, Advocate v. Crown*, 146 I. C. 653. Where one Income-tax Officer makes the assessment and another Income-tax Officer files the complaint against the assessee, the succeeding Income-tax officer is competent to prosecute as he

is a public servant (*Vide, P. D. Patel v. Emperor, A. I. R. 1933 R. 292*).

54. (1) All particulars contained in any statement made, return furnished or accounts Disclosure of in- made, return furnished or accounts formation by a public or documents produced under the servant. provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding, relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and, notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine:

Provided that nothing in this section shall apply to the disclosure—

- (a) of any such particulars for the purposes of a prosecution under the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or
- (b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or

- (c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or
- (cc) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document, or
- (d) of such facts to an authorised officer of the United Kingdom, as may be necessary to enable relief to be given under section 27 of the Finance Act, 1920, or a refund to be given under section 49 of this Act:

Provided, further, that nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 26A, or to the giving of evidence by a public servant in respect thereof:

Provided, further, that no prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

RETURNS.

Returns being confidential under section 54, the disclosure of their contents is an offence punishable by law. Copies of such returns are inadmissible in evidence and do not come within the purview of sections 24, 65, 76 and 77 of the Indian Evidence Act: *In the matter of Anwarali v. Tofazal Ahamad*, 84 I. C. 487: A. I. R. 1925 Rang. 64.

DISCLOSURE.

Disclosures under the provisos are justified if there is sanction of law behind it; but the sanction must be from the Commissioner.

INCOME-TAX RECORDS TO BE KEPT CONFIDENTIAL.

While the Act of 1918 merely penalised the disclosure by a public servant of the particulars contained in any state-

ment or return furnished under the Act section 54 further penalises the disclosure of any particulars contained in any accounts or documents produced under the Act or in any evidence given or deposition made in the course of proceedings under the Act or in any record of an assessment proceeding or proceedings for recovery of a demand, and debars the Courts from requiring public servants to produce income-tax records or to give evidence respecting the same.

The proviso to sub-section (2) contains provisions stating in what particular cases information may be disclosed. The effect of the provisions is that information obtained in connection with the assessment of incomes and recovery of the tax may be disclosed by public servants to such persons only as act in the execution of the Act and where it may be necessary to disclose the same to them for the purposes of the Act, or in order to, or in the course of, a prosecution or perjury committed in connection with proceedings under the Act. Proviso (c) was inserted mainly for the purpose of extending the protection of every action of a public servant in pursuance of the provisions of the Act or the rules such as the service of a notice by affixture. Apart from these particular cases it is essential that all records should be kept strictly confidential, and, in particular, the practice in certain provinces of furnishing information to local authorities, who impose a tax on "circumstances and property" or a local income-tax, of the detail of assessment made by the Income-tax authorities must cease. This prohibition applies equally to furnishing such information to other Government departments. (Para 97.)

SECONDARY EVIDENCE.

Secondary evidence may be given by assessee of his Income-tax return or of assessment order. No certified copies or inspection of Income-tax return or of assessment order can be given—*Debidut v. Shriram*, A. I. R. 1932 Bom. 292.

CHAPTER IX.

Super-tax.

55. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any *individual Hindu undivided family, company, unregistered firm or other association of individuals, not being a registered firm*, an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Indian Legislature.

Provided that, where the profits and gains of an unregistered firm have been assessed to super-tax, super-tax shall not be payable by an individual having a share in the firm in respect of the amount of such profits and gains which is proportionate to his share.

SUPER-TAX.

The provisions of the Act regarding income-tax other than those specially excepted in section 58 apply also to super-tax which is merely, as stated in section 55, "an additional duty of income-tax". Super-tax is levied at the rates specified in the Finance Act.

The super-tax on companies is levied at a flat rate on the whole of the profits of a company. This tax on companies, which takes the place of the tax formerly levied at a graded scale of rates on the "undistributed profits" of a company, is levied on the company as such on account of the special privileges which companies enjoy by statute in the shape of corporate finance and limited liability. No refund on account of super-tax on companies is, therefore, allowed to shareholders.

Apart from the tax on companies which stands in a class by itself, super-tax is levied on a scale of graduated rates. While in the case of income-tax the different rates are applied to the whole of an assessee's income, the different rates of super-tax are levied on successive "slices" of income, *i. e.*, on the portions of an assessee's income in excess of certain limits or the portions lying between certain limits.

Hindu undivided families are taxed for purposes of super-tax, as for income-tax purposes, as separate assesseees.

Unregistered firms are also treated as separate assesseees. Where, however, an unregistered firm itself is not assessed to super-tax (*e. g.*, if its assessable profits are less than Rs. 50,000), in that case only is the income which any individual member of an unregistered firm receives from the firm included in his total income for super-tax.

Registered firms are not assessed to super-tax, but the shares of partners in registered firms are included in the total income of the individual partners on which super-tax is levied and similarly the dividends of shareholders received from companies are included in the individual income of those shareholders.

The tax is levied on "total income" and "total income" in all cases means exactly the same thing as total income calculated for income-tax purposes with the solitary exception that where an unregistered firm is itself assessed to super-tax, the share of the profits of a member of the unregistered firm is excluded from his total income for super-tax purposes. (Para 98 of the I. T. M.).

INCOME-TAX IS A MACHINERY ONE.

The Act is a machinery one in view of the fact that the rate is determined by the Finance Act.

In the case of *Phillip Seddon Mellor v. Commissioner of Income-tax*, A. I. R. 1924 Bom. 361 : 81 I. C. 489, it was held by Chief Justice Macleod that "the actual share which Mr. Mellor held in the firm in 1922-23 has nothing whatever to do with the assessment for super-tax for the particular year, since it could only be based on his total income for the previous year, which would only include the profits which are actually received for the year ending on September 30, 1921, according to the share he had then in the firm."

SUPER-TAX—PARTNERSHIP WITH WIFE.

In *In the matter of Ambalal Sarabhai*, A. I. R. 1924 Bom. 82 : 77 I. C. 699, the Chief Revenue authority made a reference to the High Court under section 51 of the Act of 1918 to the following effect: "Whether the agreement dated June 26, 1916, between Ambalal and his wife Sarala Devi made the business of Koromchand Premchand & Co., a partnership firm and whether it constituted the said Sarala Devi a partner of her husband Mr. Ambalal so as to render the business liable to be assessed separately to super-tax as an unregistered firm as required by sections 3 and 4 of the Super-tax Act, 1920, as read with section 12(1) of the Income-tax Act, 1918."

It was held by the Bombay High Court that "the real reason of the reference seems to be that this is an unusual document between husband and wife and that it is difficult to accept the idea that they have become partners in law. In my opinion, they have become partners by this document within the meaning of the Indian Contract Act, and that the business of Koromchand Premchand constituted a firm. As it is an unregistered firm my answer to the question referred to us is in the affirmative."

**SUPER-TAX WHETHER PAYABLE ON DIVIDEND WHEN
ALREADY PAID BY THE COMPANY.**

In *In the matter of Maharaja of Darbhanga*, 78 I. C. 783 : A. I. R. 1924 Pat. 474, Chief Justice Dawson Miller observes : "It is clear, therefore, that the intention of the Legislature was to charge super-tax upon the income of companies as well as upon the income of individual shareholders including in the income of the latter, the dividends received from the company although they had been charged to super-tax at the flat rate of one anna.....It follows that no exemption can be claimed by the assessee from the payment of super-tax in respect to the dividends received by him."

**SUPER-TAX—ACCUMULATED PROFITS DISTRIBUTED IN THE
FORM OF BONUS SHARE.**

It has been held that distribution in the form of bonus share of accumulated profits is not income, profits or gains and is, therefore, not chargeable to super-tax. In *In the matter of Steel Brothers & Co., Ltd.*, A. I. R. 1924 Rag. 327 : 82 Indian cases 665, the Commissioner, while making the reference, remarks "my opinion is that the decision in *Blott's case*, (1921) 2 A. C. 171, does not apply, the furthermore if the reasoning of the majority Lords in *Blott's case* be analysed it will be found to be fallacious ; and that the present case is governed by the Privy Council ruling in *Swan Brewery Co. v. The King*, (1914) A. C. 231, and that Messrs. Steel are liable to pay super-tax on the sum of rupees 28½ lacs, being the value of the bonus shares received from the Indo Burma Petroleum Co., Ltd."

The judgment of Chief Justice Robinson is as follows : "I have given the matter my careful consideration and in my opinion the *Swan Brewery case* need not be taken to be a binding authority on us for the purpose of deciding the present reference, because it was a decision based on the special provisions of a particular Act of Western Australia an opinion in which I am supported by a large number of authorities. The question before us, therefore, has been decided twice by the House of Lords and in each case it has been held, that bonus shares, such as were distributed in this case, are not income,

profits or gains, and are not, therefore, liable to super-tax In my opinion the transaction must be regarded as a whole, and obvious intention of the Company must be taken into account. There never was and was never intended to be, any payment at all to the shareholders. No amount whatever was taken from the Company or received by the shareholders."

Similarly in the case of *Binny & Co., Ltd.*, *Mad.* 82 I. C. 17, it was held that where surplus accumulated profits are capitalized without distribution to the shareholders and new shares were issued to shareholders in the shape of their shares in accumulated profits, such new shares are not taxable and shareholders cannot be charged with super-tax on the value of the new share issued to them. This was in conformity with the decision in *Blott's case*, distinguishing the case of *Swan Brewery Co., Ltd.* But no exemption could be claimed by an assessee from payment of super-tax in respect of dividends received by him though the Company has paid the tax. (*Maharaja of Darbhanga*, 78 I. C. 783).

DIVIDENDS, BONUS SHARES AND DEBENTURES ETC.

When a company virtually makes a distribution to shareholders, under the guise of a loan or similar pretence, it may be held to be income for super-tax purposes in the hands of the recipient—*Jacobs v. Samson*, 8 T. C. 20 and vide also the case of *Hall v. Commissioner of Inland Revenue*, 5 A. T. C. 154.

The trend of modern decisions lends colour to the view that where the bonus is in some form other than cash *e.g.*, shares, debentures etc., and there is no option to take it in cash or when payment is out of capital or accumulated profits, even if there is an option to take in cash, whether exercised or not, the amounts in question will not be liable to assessment to super-tax—vide *Commissioner of Inland Revenue v. Blott*, 8 T. C. 101, *Commissioner of Inland Revenue v. Fisher's executors*, 42 T. L. R. 340, *Whitmore v. Commissioner Inland Revenue*, 5 A. T. C. I.; *Commissioner of Inland Revenue v. Wright*, 5 A. T. C. 525 and *In re Bates*, Ch (1928) L. J. N. 456.

The Calcutta High Court decision in the case of *Trustees of Late Sir David Yule* is on the same line with the decision of *Fisher's Executors*, 10 T. C. 302. (Vide I. T. L. R. 15).

The above decisions do not apply when the bonus takes the form of the distribution of stock etc., in another Company—*Pool v. Guardian Investment Trust*, 8 T. C. 167 or when a dividend is returned to a Company in payment for shares—*Roe v. C. I. R.*, 8 T. C. 613.

A surplus on liquidation, even when consisting largely of

accumulated profits is not income for the purposes of super-tax in the hands of the shareholders—*C. I. R. v. Burrel*, 9 T. C. 27.

A dividend paid without deduction of tax out of funds which are not liable to assessment to income-tax will not be liable to super-tax in the hands of the recipients.—*Gimson v. C. I. R.*, 9 A. T. C. 170.

Dividends generally will be receivable on the day on which they are declared, in the absence of special circumstances—*Mark Hurl v. C. I. R.*, 8 T. C. 293 ; and *Duncan v. C. I. R.*, 8 T. C. 433.

The Finance Act of 1922, which for the purpose of assessing super-tax, allows a larger deduction from income in the case of Hindu joint family than in the case of an individual, contemplates that the larger deduction shall be made only in a case of the income of an undivided family in which all the co-parceners are interested and not in the case of an impartible estate when the income is the sole property of the holder for the time being ; *In the matter of Shiva Prosad Singha*, 4 Pat. 73 : 82 I. C. 653. In the case of *Kishen Kishore v. Commissioner of Income-tax, Lahore*, 141 I. C. 415, the Lahore High Court has held that the rule as to allowances payable to a junior member of a Hindu family does not apply to the case of an impartible state, which is still a H. U. F. and the holder of such estate is to be assessed as the head of the H. U. F. and not as an individual for the purposes of super tax. It seems that the latter view is more sound.

SUCCESSOR IS NOT BOUND TO PAY WHAT CANNOT BE LAWFULLY RECOVERED FROM HIS PREDECESSOR.

In the case of *Begg Sutherland & Co., Ltd.*, 82 I. C. 239 : 23 A. L. J. 685, it was held that there is no provision in the Act of 1922 which made a new company liable to super-tax for a year for which its predecessor was not liable for super-tax. (Attention is invited to the decision in the case of *Western India Turf Club*. 106 I. C. 642, where rate of super-tax relating to successor has been discussed). But where an assessee controls and receives income from family companies he is liable to super-tax ; *In the matter of Maneckjee Petit*, 102 I. C. 49 : 51 Bom. 372.

For purposes of surtax the income which an assessee receives from shares in a company in any year is the sum actually paid to him by the company added to the amount deducted for income-tax at the standard rate for the time being. The income should not be calculated by adding to the sum actually paid to him a sum calculated from that actually paid by the company as income-tax during the same year and proportionate to the assessee's interest in the company, inasmuch as the company

is entitled under the rules to deduct from the dividends the tax appropriate thereto and the expression "Tax appropriate thereto" means the tax calculated at the rate prevailing at the date of the payment of the dividend that is appropriate to the dividend—*Hamilton v. Commr. of Inland Revenue*, (1931) 100 L. J. K. B. 693 (C.A.)

ONE-MAN COMPANY.

In *In the matter of Sir Dinshaw Maneckjee Petit*, 102 I. C. 49, it has been held that "the court can go into the question as to whether the so-called one-man company is really a business carried on by the assessee himself for the purposes of avoiding payment of tax. The company was not a genuine company at all but merely the assessee himself, disguised under the legal entity of a limited liability company. The company was formed by the assessee purely and simply as means of avoiding super-tax and that the company was nothing more than the assessee himself. It did no business but was created purely and simply as legal entity to ostensibly receive the dividends and interest and hand them over to the assessee as pretended loans."

DEMAND NOTICE.

There is no provision to assess super-tax separately. A single demand notice showing income-tax and super-tax payable is quite sufficient.

56. Subject to the provisions of his Chapter, the Total income for purposes of super-tax. total income of any *individual, Hindu undivided family, company, unregistered firm or other association of individuals*, shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year.

SUPER-TAX.

The provisions of the Act regarding income-tax other than those specially excepted in section 58 apply also to super-tax which is merely, as stated in section 55, "an additional duty of income-tax." Super-tax is levied at the rates specified in the Finance Act.

The super-tax on companies is levied at a flat rate on the whole of the profits of a company. This tax on companies,

which takes the place of the tax formerly levied at a graded scale of rates on the "undistributed profits" of a company, is levied on the company as such on account of the special privileges which companies enjoy by statute in the shape of corporate finance and limited liability. No refund on account of super-tax on companies is, therefore, allowed to shareholders.

Apart from the tax on companies which stands in a class by itself, super-tax is levied on a scale of graduated rates. While in the case of income-tax different rates are applied to the whole of an assessee's income, the different rates of super-tax are levied on "successive slices" of income, *i.e.*, on the portions of an assessee's income in excess of certain limits or the portions lying between certain limits.

Hindu undivided families are treated for purposes of super-tax, as for income-tax purposes, as separate assessees.

Unregistered firms are also treated as separate assessees. Where, however, an unregistered firm itself is not assessed to super-tax (*e.g.*, if its assessable profits are less than Rs. 50,000), in that case only is the income which any individual member of an unregistered firm receives from the firm included in his total income for super-tax.

Registered firms are not assessed to super-tax but the shares of partners in registered firms are included in the total income of the individual partners on which super-tax is levied and similarly the dividends of shareholders received from companies are included in the individual income of those shareholders.

The tax is levied on "total income" and "total income" in all cases means exactly the same thing as total income calculated for income-tax purposes with the solitary exception that where an unregistered firm is itself assessed to super-tax, the share of the profits of a member of the unregistered firm is excluded from its total income for super-tax purposes. (Para 98 of the I. T. M.)

ESTATE OF A DECEASED PERSON.

There is no provision for the assessment of income-tax in the estate of a deceased person. *In re : Mitchel v. Macneil*, 103 I. C. 120: 31 C. W. N. 630, *Vide* also the case of *Mr. Ellis C. Reid* (A. I. R. 1931 Bom. 333).

TOTAL INCOME.

Super-tax is to be determined on total income within the meaning of section 16 of the Indian Income-tax Act.

SUPER-TAX PAID BY THE SURVIVING PARTNERS.

Where the assessee dies before crediting the tax in the treasury and the amount of tax is paid by the surviving partner, he is not entitled to claim any refund of the tax deposited. *In the matter of Mitchel v. Macneil*, 31 C. W. N. 630.

57. (1) In the case of any person residing out of British India who is a member of a registered firm, and whose share of the profits from such firm is liable to super-tax, the remaining members of such firm who are resident in British India shall be jointly and severally liable to pay the super-tax due from the non-resident member in respect of such share.

Non-resident partners and shareholders.

(2) Where any person pays any tax under the provisions of this section on account of *another person* who is residing out of British India, credit shall be given therefor in determining the amount of the tax to be payable by any agent of such non-resident *person* under the provisions of sections 42 and 43.

DEDUCTION OF SUPER TAX AT THE SOURCE.

One of the exceptions to the general rule that super-tax is not deducted at the source is that provided for in section 57. That provision is rendered necessary owing to the difficulty of obtaining super-tax from non-residents. Section 57(1) provides that in order to recover super-tax from the share of the profits of a partner in a registered firm, who is not resident in British India, the resident partners are themselves jointly and severally liable to pay the super-tax due from the non-resident in respect of his share. Sub-section (2) authorises an Income-tax Officer to require the principal officer of a company to deduct super-tax at the rate determined by him from the dividends payable to a non-resident shareholder whose total income is expected to exceed the minimum amount liable to super-tax even if the amount of the dividend or dividends payable with the income-tax thereon does not by itself exceed the minimum liable to super tax. This rate must be the effective or average rate of super tax; that is to say, first, the total amount of super-tax due on the total income must be calculated; then the rate is to be arrived at by dividing this total super-tax by the total income. That rate is to be notified to all persons paying dividends and they should be required to deduct super-tax at that rate from whatever dividends they

pay. Sub-section (2) should not ordinarily be resorted to where the non-resident shareholder has a duly authorised agent in India to whom his dividends are paid and through whom he can be assessed to super-tax in the ordinary way under section 43 of the Act. But sub-section (2) should be employed where special circumstances render it necessary. For example, where a non-resident has resorted to some device by which proceedings under section 43 have been rendered infructuous. Any such case should be reported by the Income-tax Officer concerned through the Assistant Commissioner to the Commissioner of Income-tax whose orders should be taken before proceeding under the new section 57(2). Sub-section (3) makes the principal officer of a company liable to deduct any super-tax due on dividends payable to a shareholder whom he has no reason to believe to be resident in British India. The liability merely attaches where the amount of the profits or dividends payable to the non-resident partner or shareholder together with the amount of any income-tax payable by the company in respect thereof, is taken by itself, liable to super-tax on the assumption that it represents the whole income of the non-resident partner or shareholder. It should be observed that if, for example, dividends are paid half-yearly and the combined amount of the two payments in any year and the income-tax thereon exceeds the minimum liable to super-tax though the first payment including the income-tax on it taken by itself does not exceed it, the principal officer is bound to deduct the super-tax on such excess from the second payment. The Act does not require the resident partner or the principal officer to obtain from the non-resident partner or shareholder a statement of any other income that may accrue to him in British India. Where there is reason to believe that there is such other income, it will be necessary to rely on the provisions of sections 42 and 43 of the Act or sub-section (2) of section 57. In the case of companies, the obligation to deduct applies only to dividends, and does not apply to other sums which a non-resident may receive from the company by way of the interest on debentures or remuneration such as directors' fees. If the non-resident is himself assessed through an agent, sub-section (4) provides that the amount deducted at the source in this manner shall be taken into account in determining the amount payable by him in respect of any other income.

In the case of registered firms it should in most cases be possible to treat the person who registered the firm as the agent of non-resident partner and to require him to disclose the whole income accruing in India to such non-resident partner.

Another exception to the general rule that super-tax is not

deducted at source is provided in section 58H in respect of an employee's total income as determined under section 58J (3). (Para 99).

SUPER-TAX—DEDUCTION AT SOURCE FROM DIVIDENDS OF NON-RESIDENT SHAREHOLDERS [SECTION 57(3)].

Sometimes large blocks of shares are registered in the names of banks, and are held by them on behalf of the real owners for various reasons, though the banks have no proprietary or beneficial interest therein. The aggregate dividends on a block of shares in a single company thus held by a bank may exceed the maximum amount exempt from super-tax, though the dividends payable to some or all of the real owners individually may not exceed that amount. In such circumstances super-tax should not be deducted at source from the dividends payable to the bank irrespective of the liability of the several real owners of the shares. If, therefore, a bank in such circumstances furnishes the Income-tax Officer, assessing the company from time to time with a list giving the names and addresses of the real owners of the shares and the number of shares held by each, the Income-tax Officer will inform the principal officer of the company under sub-section (2) of section 57 of the rate of super-tax to be deducted in respect of the dividends payable to the bank, or that no super-tax is to be deducted therefrom, as the case may be, having regard to the liability of the individual shareholders. (Para 100 of the I. T. M.)

SCOPE.

This section relates solely to the non-residents. It makes the resident members of a registered firm primarily responsible for the super-tax payable by a non-resident. This practically authorises deduction of super-tax at source on dividends payable by the non-resident.

In the case of *Remington Typewriter & Co.*, A. I. R. 1928 Bom. 465, it was held that under the amended sections 57 and 58 of the Income-tax Act, the appropriate amount of super-tax on the dividend of the Indian companies should be deducted by the principal officer of each company concerned.

58. (1) All the provisions of this Act *relating to the*
 Application of Act *charge, assessment, collection and re-*
 to super-tax. *covery of income-tax except those con-*
tained in section 3, the proviso to sub-section (1) of
section 7, the second and third provisos to section 8,
sub-section (2) of section 14, and sections 15, 17, 19, 20,
21, 48, 58-F and sub-sections (2) and (3) of section
58-G shall apply, so far as may be, to the charge,
assessment, collection and recovery of super-tax.

(2) Save as provided in *sub-sections (3A), (3B), (3C), and (3D) of section 18, section 57 and section 58-H*, super-tax shall be payable by the assessee direct.

RULE 44.

All sums deducted in accordance with sub-sections (2) and (3) of section 57 shall be paid by the person making the deduction to the credit of the Government of India within one week from the date of such deduction by remitting the amount to the Income-tax Officer concerned or to such Government Treasury or branch of the Imperial Bank of India as he may direct. The person making the deduction shall send at the same time to the Income-tax Officer a statement showing the name of the non-resident person on whose behalf the tax has been deducted, the amount of the tax deducted, the gross amount of dividend in respect of which the deduction has been made and the period for which the dividend has been paid.

SUPER-TAX IS NOT APPLICABLE TO CERTAIN SECTIONS.

(1) Section 3 which relates to charge of income-tax is inapplicable. Registered firms are not chargeable to super-tax.

(2) Section 7(1) permitting certain allowances to be made in respect of salaries is also not applicable.

(3) The proviso to section 8 permitting certain allowances in respect of interest on securities, has no application for super-tax purposes.

(4) Section 14(2) which relates to the dividends of companies receipts by the shareholders, etc., has no application for super-tax purposes.

(5) Section 15 which relates to deduction of Life Insurance premium from income-tax, has no application to super-tax.

(6) Section 17 which allows marginally so far as income-tax is concerned, has got no application to super-tax.

(7) Section 18 which provides for deduction at source in respect of certain sources of income and the disposal of such deduction and for certificate of deduction are not applicable to super-tax.

(8) Section 19 relating to payment of taxes in cases other than those mentioned in section 18 has no application to super-tax.

(9) Section 20 which provides for a certificate by a company to shareholders for deductions of income-tax, is not permissible.

(10) Section 21 relating to enforcement as to how returns are to be made, has no application.

(11) Section 48 which provides for refunds in certain cases for computing the total income of non-resident and for denial of refund to non-British subjects.

SUPER-TAX AND GOVT. OF INDIA NOTIFICATION

Dated 4th April 1931.

Where an assessee has got an income just above the super-tax amount, he cannot claim nor the income-tax authorities are entitled to give any marginal relief to the assessee. Section 17 has no application for super-tax purposes.

But the Governor-General in Council, in exercise of the powers conferred by section 60 of the Indian Income-tax Act, 1922, is pleased to direct as follows :—

Where owing to the fact that the total income of an assessee has reached or exceeded a certain limit, he is liable to pay super-tax or to pay super-tax at a higher rate, the amount payable by him on account of income-tax and super-tax, shall, where necessary, be reduced so as not to exceed the aggregate of the following amount, namely—

(a) the amount which would have been payable on account of income-tax and super-tax if his total income had been a sum less by one rupee than that limit, and

(b) the amount by which his total income exceeds that sum.

But it is doubtful whether the Governor-General in Council is competent by virtue of section 60, to introduce a new matter *i.e.*, marginal relief, without amending the substantive section 58 by legislative enactment. *vide* also notes and Instructions regarding the Income-Tax Law and Rules under para 17B (5th Edn.).

CHAPTER IXA.

Special Provisions Relating to Certain Classes of Provident Funds.

58A. In this Chapter unless there is anything
Definitions. repugnant in the subject or context,—

(a) a “recognised provident fund” means a provident fund which has been and continues to be recognised by the commissioner, in accordance with the provisions of this Chapter ;

(b) an “employer” means—

(i) a Hindu undivided family, company, firm or other association of individuals of persons, or

(ii) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10 or section 11,

maintaining a provident fund for the benefit of his or its employees ;

(c) an “employee” means an employee participating in a provident fund, but does not include a personal or domestic servant ;

(d) a “contribution” means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest ;

(e) the “balance to the credit” of an employee means the total amount to the credit of his individual account in a provident fund at any time ;

- (f) the “annual accretion” to the balance to the credit of an employee means the increase to such balance in any year arising from contributions and interest ;
- (g) the “accumulated balance due” to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund ; and
- (h) the “regulations of fund” means the special body of regulations governing the constitution and administration of a particular provident fund.

58B. (1) The Commissioner of Income-tax may ^{The according and withdrawal of recognition.} accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in section 58C and the rules made thereunder, and may, at any time, withdraw such recognition, if in his opinion, the provident fund contravenes any of those conditions.

(2) The Governor General in Council may, at his discretion, direct the Commissioner of Income-tax to refuse to accord recognition to any provident fund, or may, at any time, withdraw recognition from any recognised provident fund.

(3) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Central Board of Revenue may make in this behalf, such date not being later than the last day of the financial year in which the order is made.

(4) An order withdrawing recognition shall take effect from the day on which it is made.

(5) An employer objecting to an order of the Commissioner refusing to recognise a provident fund may appeal, within sixty days of such order, to the Central Board of Revenue.

The appeal shall be in the form and shall be verified in the manner prescribed by the Central Board of Revenue,

58C. (1) In order that a provident fund may receive⁷ and retain recognition, it shall satisfy :
 Conditions to be satisfied by a recognised provident fund. the conditions set out below and any other conditions which the Governor-General in Council may, by rule, prescribe—

- (a) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in British India.
- (b) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund.
- (c) Subject to the provisions of section 58D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year.
- (d) The fund shall consist of contributions as above specified, of accumulations thereof, and of interest (simple and compound), credited in respect of such contributions and accumulations, and of securities purchased therewith, and of no other sums.
- (e) The fund shall be vested in two or more trustees, or in the Official Trustee, under a

trust which shall not be revocable save with the consent of all the beneficiaries.

- (f) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations, of the fund.

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund.

- (g) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund.

- (h) Save as provided in clause (g), or in accordance with such conditions and restrictions as the Governor General in Council may, by rules, prescribe, no portion of the balance to the credit of an employee shall be payable to him.

(2) Where there is a repugnance between any regulation of a recognised provident fund and any provision of this Chapter or of the rules made thereunder, the regulation shall, to the extent of the repugnance, be of no effect.

The Commissioner may, at any time, require that such repugnance shall be removed from the regulations of the fund.

58D. Subject to any rules which the Governor General in Council may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (c) of sub-section (1) of section 58C—

Power to relax restrictions of employer's contributions in certain cases.

- (a) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem ; and
- (b) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

58E. The annual accretion in any year to the balance at the credit of an employee participating in a recognised provident fund shall be deemed to have been received by him in that year and shall be included in his total income for that year, and, subject to the exemptions specified in section 58F, shall be liable to income-tax and super-tax :

Annual accretion deemed to be income received.

Provided that, for the purpose of sub-section (3) of section 15, out of such annual accretion only the employee's own contributions shall be included in his total income.

58F. (1) An employee shall not be liable to pay income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any year does not exceed one-sixth of his salary in that year.

Exemption of annual accretion from income-tax.

(2) In the accounts of a recognised provident fund, the contributions exempted from income-tax under

sub-section (1) and accumulations thereof shall be shown separately, and interest thereon shall be calculated and shown separately. Such interest shall be exempt from payment of income-tax, in so far as it is allowed at a rate not exceeding such rate as the Governor General in Council may, by notification in the Gazette of India, fix in this behalf.

58G. (1) Where the accumulated balance due to an employee participating in a recognised Provident Fund becomes payable, such accumulated balance shall be exempted from payment of super-tax except to the extent of an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under section 58-E up to the first day of April, 1933, if the Indian Income-tax (Second Amendment) Act, 1933, had come into force on the 15th., March, 1930.

(2) Where an employee participating in a recognised provident fund has rendered continuous service with his employer for a period of not less than five years, and the accumulated balance due to him becomes payable, such accumulated balance shall be exempt from payment of income-tax and super-tax, and shall be excluded from the computation of his total income :

Provided that the Commissioner of Income-tax may allow such exemption and exclusion where the employee has rendered continuous service with the employer for a period of less than five years, if, in his opinion, the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employer's business, or other cause beyond the control of the employee.

(3) Where exemption from payment of income-tax is not allowed under the provisions of sub-section (2), the Income-tax Officer shall calculate the total of the various sums of income-tax from the payment of which the contributions and interest credited to the employee's individual account have been exempted under the provi-

sions of sub-sections (1) and (2) of section 58F, and such total shall be payable by the employee, in addition to any other income-tax for which he may be liable for the year in which the accumulated balance due to him becomes payable.

58H. The trustees of a recognised provident fund, or other person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, at the time an accumulated balance due to an employee is paid, deduct therefrom any income-tax payable under sub-section (2) of section 58G and any income-tax and super-tax payable on an employee's total income as determined under sub-section (3) of section 58J, and sub-sections (4) to (9) of section 18 shall apply as if the sum to be deducted were income-tax payable under the head "salaries."

Deduction at source of income-tax payable on accumulated balance due.

58I. (1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars as the Central Board of Revenue may prescribe.

Accounts of recognised provident funds.

(2) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Central Board of Revenue may prescribe.

58J. (1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day before the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Central Board of Revenue may prescribe.

Treatment of balances in newly recognised provident funds.

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in

the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-sections (3) and (4) shall apply thereto.

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income-tax and super-tax in accordance with the provisions of this Act other than this Chapter.

(3) Subject to such rules as the Central Board of Revenue may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Chapter had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any such sum, and such aggregate (if any) shall be deemed to be income received by the employee in the year in which the recognition of the fund takes effect, and shall be included in the employee's total income for that year; and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance:

Provided that, in cases of serious accounting difficulty, the Commissioner shall have power, subject to the said rules, to make a summary calculation of such aggregate.

(4) Notwithstanding anything contained in condition (h) of sub-section (1) of section 58C, an employee, in order to enable him to pay the amount of tax assessed on his total income as determined under sub-section (3), shall be entitled to withdraw from the balance to his credit in the recognised provident fund, a sum not exceeding the difference between such amount and the amount to which he would have been assessed

if the transferred balance had not been included in his total income.

(5) Nothing in this section shall affect the rights of the persons administering an unrecognised provident fund or dealing with it, or with the balance to the credit of any individual employee, before recognition is accorded, in any manner which may be lawful.

58K. (1) Where an employer who maintains a Treatment of fund transferred by employer to trustee provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall be deemed to be an expenditure by the employer within the meaning of clause (ix) of sub-section (2) of section 10, incurred in the year in which the accumulated balance due to the employee is paid.

58L. (1) All rules made under this Chapter shall be subject to the provisions of sub-sections (4) and (5) of section 59. Provisions relating to rules.

(2) In addition to any power conferred by this Chapter, the Governor General in Council may make rules—

- (a) prescribing the statements and other information to be submitted with an application for recognition ;
- (b) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company ;

- (c) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund ;
- (d) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn ; and
- (e) generally, to carry out the purposes of this Chapter and to secure such further control over the recognition of provident funds and administration of recognised provident funds as he may deem requisite.

58M. This Chapter shall not apply to any provident fund to which the Provident Funds Act, 1925, applies.

Application of this Chapter.

STATEMENT OF OBJECTS AND REASONS.

The object of this is to give as far as possible the same relief in respect of income-tax to contributions made to private provident funds maintained by commercial and other employers as is now given in respect of the Life Insurance premium. This concession is proposed to be given in order to encourage thrift.

.....Broadly speaking the form that the concession will take is that of exemption from income-tax of contributions made both by the employer and by the employee in so far as those contributions do not exceed one-sixth of the employee's salaries. It is to be noted that it is not intended to double the total relief which can be claimed by any individual, and if a subscriber to a provident fund is also paying an annual Life Insurance premium, he will only be entitled to claim income-tax relief in respect of the latter to the extent that the joint contributions to the provident fund fall short of one-sixth of his total income. The concession will be restricted to provident funds which are subject to irrevocable trusts and otherwise conforms to the conditions laid down in this.

Section 58B relates to the grant and withdrawal of recogni-

tion of a fund which will vest to the Commissioner of Income-tax.

APPEAL.

Where the Commissioner of Income-tax refuses to accord recognition to a provident fund, the party aggrieved may prefer an appeal to the Central Board of revenue against the order of such refusal within 60 days of such order.

Section 58C imposes certain conditions which must be satisfied by a recognised provident fund.

(1) All employees must be employed in India or must be employed by an employer having principal place of business in British India.

(2) That the employee's contributions must be a definite proportion of his salary.

(3) That the employer's contributions must not exceed the amount of contribution of the employee.

(4) That the fund shall consist of contributions, of accumulations, therefor, and of interest as well.

(5) The fund shall vest in two or more trustees under an irrevocable trust.

(6) That the employer shall not be entitled to recover any sum from the fund except in the cases of dismissal of the employee for his misconduct or when he resigns before the expiration of the term of service.

(7) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee.

58D gives power to relax restrictions imposed on the employer under section 58C. This section authorises that the Commissioner may permit the payment of larger contributions by an employer to the individual accounts of employee whose salary does not exceed Rs. 500 per month.

Section 58F relates to exemption of annual accretion from income-tax although such annual accretion shall be included in his total income and shall be liable to income-tax and super-tax subject to the exemption under section 58F.

Section 58G relates to exemption of accumulated balance from income-tax and super-tax where an employee has rendered continuous service with his employer for a period of not less than 5 years. The Commissioner may grant the exemption even where the service is for a period less than 5 years.

Section 58H entitles the trustee the time when an accumulated balance due to an employee is paid, to deduct at source of income-tax payable on accumulated balances due.

Section 58I relates how accounts of recognised provident funds are to be maintained.

Section 58J refers to treatment of balances in newly recognised provident funds.

Section 58K provides that where an employer maintains a provident fund for the benefit of his employees and transfers the same to trustees in trust, the amount so transferred is a capital expenditure within the meaning of section 58K.

Section 58L refers to provisions relating to rules. These rules must be published in the Gazette of India before any effect is to be given.

Section 58M. This chapter is not applicable to any provident fund to which the Provident Funds Act, 1925, applies.

Exemption of "recognised" Provident Funds.—Besides the Provident Funds mentioned in paragraph 20, Provident Funds maintained by employers [section 58-A (b)] which conform to the conditions laid down in section 58-C of the Act inserted by the Indian Income-tax (Provident Funds Relief) Act, 1929, enjoy certain privileges in respect of income-tax subject to certain conditions. The main conditions to which such Provident Funds must conform in order to secure these concessions are :—

- (1) that the funds shall be vested in two or more trustees or in the Official Trustee under an irrevocable trust ;
- (2) that the employer shall not be entitled to recover any sum whatsoever from the Fund except where the employee is dismissed for misconduct or voluntarily leaves employment without adequate reasons ;
- (3) that in any case such recoveries shall be limited to the contributions made by the employer himself ;
- (4) that the subscriptions of the employees and the contributions by the employer shall be regular and not casual ;
- (5) that the employers' contribution should not exceed the employees' subscription as a rule, and
- (6) that the employee shall be employed in India or the principal place of business of the employer shall be in British India.

The income-tax concessions are :—

- (a) contributions to a recognised Provident Fund both by the employee and the employer taken together shall be exempt from income-tax but not from

super-tax up to 1-6th of the employee's annual salary. In addition, an employee can obtain under section 15 (1) rebate of income-tax on insurance premia subject to the limit laid down in section 15 (3). If in any Fund the contributions made by an employee and the employer exceed the 1/4th limit, the excess contributions and the interest thereon together with interest in excess of the prescribed maximum (at present 6 per cent.) will be liable to tax ;

- (b) income on the investments held by the Fund is also exempt from income-tax ;
- (c) the accumulated balance due to an employee which includes interest on contributions—is also exempt from income-tax and super-tax and is not to be included in computation of the total income, provided the employee has rendered continuous service with his employer for not less than five years. The Commissioner has also power in certain circumstances to allow the exemption even when the service rendered is less than this period.

The contributions made by an employer to the individual accounts of his employee in a recognised Fund, less recoveries, if any, under the provisions of section 58-C (1) (f), are to be allowed as an item of expenditure under section 10 (2) (i) of the Act, as the Fund is an irrevocable trust.

Recognition of Provident Funds and withdrawal of recognition. (Section 58-B).—The Commissioner of Income-tax may accord recognition to any Provident Fund which, in his opinion satisfies the conditions prescribed in section 58-C and the Indian Income-tax (Provident Funds Relief) Rules. An employer objecting to an order of the Commissioner refusing to recognise a Provident Fund may appeal, within 60 days of such order, to the Central Board of Revenue in the form prescribed in the Indian Income-tax (Provident Funds Relief) (Central Board of Revenue) Rules.

There is no specific provision in the Act or Rules for an appeal against *withdrawal* of recognition by the Commissioner, but such an appeal should be allowed subject to the same conditions as are applicable to an appeal against an order of the Commissioner refusing recognition. The Government of India have reserved the power to withhold or withdraw recognition from any provident funds [section 58-B (2)].

Conditions to be satisfied by recognised Provident Funds. (Sections 58-C and 58-D).—*Investment of funds.*—A recognised provident fund consists of contributions by employers and

employees, accumulations, interest thereon and securities purchased therewith and no other sums. So long as the 'transferred balance' [section 58-J (2)] and the employees' contributions, interest thereon, etc., are not invested, the fund will consist solely of subscriptions, accumulations and interest thereon. If any part of the fund is deposited in the employer's own concern, and the employer gives the Trustees a promissory note therefor the note may be considered to be a "security" within the meaning of section 51-C (1) (d). So far as the transferred balance of a fund is concerned, there is no restriction as to the manner in which it should be held or invested. It may be utilized in the employer's own business, or deposited in a bank or invested in "securities" in the widest sense of the term. The same is true of the employer's contributions subsequent to recognition and the interest thereon and on the accumulations of such interest. The employees' contributions subsequent to recognition and the interest thereon and on accumulations of such interest must be invested in the securities of the nature described in section 20 (a), (b), (c), (d) or (e) of the Indian Trusts Act, 1882, and payable in respect of both capital and interest in British India.

A reasonable interval should be allowed to the trustees to accumulate the contributions collected before requiring their investment as above.

A fund is not rendered ineligible for recognition by the fact that it can be closed or wound up at will by the employer or the Trustees, provided that it is not revocable otherwise than in accordance with section 58-C (1) (e).

The fact that a fund receives donations, for example from retiring partners, should not be held to render it ineligible for recognition.

Appreciation and depreciation in securities belonging to recognised provident funds.—In certain Provident Funds it is the practice to revalue the securities held at the end of each financial year and to take the appreciation and depreciation thus ascertained into consideration before allocating to the members their share of the annual profit. This practice does not render the funds ineligible for recognition. *Plus* and *minus* entries relating to such appreciation or depreciation should be made in the remarks column of the Form of account prescribed in rule 6 of the Indian Income-tax (Provident Funds Relief) (Central Board of Revenue) Rules (Part II of the Manual). Such appreciation or depreciation need not be taken into account in determining the rate of interest under section 58-F (2).

The appreciation of securities itself cannot directly come into the computation of the employee's total income or be

liable to tax at any time. Though it is a form of accumulation of contributions, it is also not income but an increase of capital.

Forfeitures to recognised provident funds. [Section 58-C. (1) (d)].—The only amounts that an employer is allowed by the Act to recover from a recognised Provident Fund are his own contributions to the account of a dismissed employee or an employee voluntarily leaving his employment as stated in section 58-C (1) (f) and of interest on such contributions. If the rules of any fund provide for forfeitures to the employer of any other monies—for example of a dismissed employee's own contributions and the interest thereon, this provision is repugnant to section 58-C (1) (f) and renders the fund ineligible for recognition.

A provision for the forfeiture to the *fund* in certain circumstances (*e. g.* assignment of employee's interest, an employee leaving service to take employment under a rival) of so much of the amount standing to the credit of an individual employee as is in no circumstances recoverable by the employer, under clause (f) of sub-section (1) of section 58-C of the Act, does not render the fund ineligible for recognition under that sub-section.

Such amounts represent accumulations of sums credited out of the employee's salary with interest thereon, and it is clear that these amounts are within the language used in clause (d) of sub-section (1) of section 58-C, read with the definition of "contribution" in clause (d) of section 58-A. The effect of clause (g) of sub-section (1) of section 58-C is not to require that so much of the balance at the credit of an individual employee as is not recoverable by the employer under clause (f) should be payable to the employee. It requires the accumulated balance due to the employee to be payable to the employee, and the definition of "accumulated balance due" in clause (g) of section 58-A expressly recognises the possibility that by the regulations of a fund any part of the balance to the credit of an employee may be excluded from the amount claimable by him and therefore from the accumulated balance due for the purposes of clause (g) of sub-section (1) of section 58-C.

While therefore recoveries by the *employer* are governed by clause (f) of sub-section (1) of section 58-C, forfeitures to the *fund* are left by the Act to be governed by the regulations of the fund, so that no provision in the regulations of the funds for the forfeiture to the *fund* of any part of the balance to the credit of the individual employee will render the fund ineligible for recognition.

The inclusion in the rules of a provident fund of a provision for the payment of forfeited amounts of an individual member to his wife and family does not render the fund ineligible for recognition. The definition of the expression "accumulated balance due" to an employee which is set out in section 58-A makes it plain that the amount which is payable to the employee is not necessarily the equivalent of the total of his contributions, the employer's contributions and the interest which has accumulated thereon; and the provisions of clause (g) of section 58-C, read with this definition of the "accumulated balance due" are not inconsistent with the payment to a third party of forfeited amounts, although the circumstances in which the employer can himself take these amounts are limited by clause (b) of section 58-C.

The inclusion in the regulations of a provident fund of a provision for the forfeiture to the fund of the accumulated balance due to an employee who dies without heirs also does not make the fund ineligible for recognition. Such forfeiture to the fund does not put anything into the fund, because what is forfeited to the fund is already in the fund. As the act of forfeiture does not put any sum at all into the fund, it cannot be held to put into the fund any sum other than the contributions, etc., specified in section 58-C(1) (d). The question of the validity of a regulation forfeiting to the fund the accumulated balance due to an employee who dies intestate and without heirs does not arise, as the existence of such a regulation, whatever it may be worth, does not affect the composition of the fund for purposes of clause (d) of sub-section (1) of the same section.

Payment of accumulated balances of recognised provident funds to employees discontinuing participation. [Section 58-C (1) (g) and (h)].—If an employee who is a subscriber to a recognised provident fund, the membership of which is optional, decides to discontinue his membership of the fund while not resigning his employment, he is entitled to claim repayment of the accumulated balance at his credit, under section 58-C (1) (g) of the Act. Under section 58-A (e) of the Act, an "employee" means an employee participating in a provident fund. Thus a person who discontinues his participation in a fund "ceases to be an employee" within the meaning of section 58-C (1) (g) and is, therefore, entitled to claim payment of the accumulated balance due to him.

A private provident fund, participation in which is *optional*, is not qualified for recognition unless the rules confer on the participants the right to receive payment of the accumulated balance whenever participation is discontinued.

Recognised Provident Funds of businesses with principal

place out of India. [Section 58-C (1) (a)].—If a concern has its principal place outside British India, the Provident Fund of the employees of its British Indian business, if it is to be “recognised”, should be kept separate and must conform to the conditions imposed by the Act and the rules thereunder. The expression “all employees” occurring in section 58-C (1) (a) refers to “all employees *subscribing* to the Fund” and not to all employees of the particular employer. If a concern has its principal place of business in British India, there is no objection to the foreign staff—that is the staff outside British India—subscribing to the Provident Fund. They will not get any rebate of tax on the monthly contributions since their salaries having been earned outside British India will not be taxed but they will get the advantage of the exemption from income-tax of the interest on the investments of the Fund.

Interest on accumulated balance in recognised provident funds. (Section 58-F).—Interest on accumulations in recognised provident funds is exempt from income-tax but not from super-tax up to a rate to be fixed by Government which is 6 per cent. at present. In some funds, a provisional rate of interest is allowed to the employees in the first instance and the difference between the interest actually earned by the fund and the provisional rate so allowed is distributed between the employees on a basis which has some regard to the length of service of the employees. In such cases, the interest credited to the individual accounts should be exempted in so far as the average interest earned by the fund as a whole does not exceed the prescribed rate of interest.

Interest on sums credited to an employee’s account in a recognised Provident Fund, which sums represent his share of the appreciation in the value of the securities held by the Fund, is to be regarded as interest within the meaning of sections 58-A (f) and 58-C (1) (d).

Interpretation of “salary” in relation to recognised provident funds. [Section 58-F (1)].—That the expression “salary” as used in Chapter IX-A of the Act does not embrace everything taxable under the head “salaries” in accordance with sub-section (1) of section 7, is obvious from clause (b) of sub-section (1) of section 58-C read with clause (b) of section 58-D. For the purposes of Chapter IX-A, “salary” includes so much only of an employee’s remuneration as is of a specific monetary amount and is payable periodically. It includes “salary” (in the more general sense in which that expression embraces “wages”) which is received by any category of employees other than those excluded in clause (c) of section 58-A.

Accounts of recognised provident funds. (Sections 58-I and 58-J).—The accounts of recognised provident funds are to

be maintained in the form prescribed in the Indian Income-tax (Provident Funds Relief) (Central Board of Revenue) Rules. If a concern has several branches, the annual abstracts of the provident funds accounts should be sent by the employer to all Income-tax Officers who are responsible for assessing the employees.

The accounts to be made under the provisions of section 58-J must show in respect of every employee the particulars given in rule 8 of the Indian Income-tax (Provident Funds Relief) (Central Board Revenue) Rules.

*Treatment of a fund transferred by employer to trustees. (Section 58-K).—*Any sum transferred by an employer before coming into force of the Indian Income-tax (Provident Funds Relief) Act, 1929, to the Provident Fund of his employees which has been converted into an irrevocable trust is a permissible deduction in assessing the profits of the employer. Sub-section (1) of section 58-K operates with reference to any assessment made after the coming into force of the Provident Funds Relief Act XII of 1929 *whenever the conditions necessary to its operation are satisfied*. The conditions necessary to its operation are that it can be predicated of the employer :—

- (a) that he maintains a Provident Fund for the benefit of his employees.
- (b) that he has not transferred the Fund or relevant portion thereof,
- (c) that he transfers the Fund or relevant portion.

The use of the perfect tense in the definition of condition (b) and of the present tense in the definition of condition (c) shows that these conditions cannot be satisfied by any employer who, having already transferred the Fund or relevant portion before the Provident Funds Relief Act came into force, was not when the Act came into force in the position of not having transferred it, and was therefore not in a position to transfer it.

It must not be overlooked that while an employer who has effected a transfer before the coming into force of the Provident Fund Relief Act will not suffer the loss resulting from the operation of sub-section (1) of section 58-K, he will as a corollary not enjoy the benefit resulting from the operation of sub-section (2) of that section.

Employers' subscriptions to an unrecognised provident fund may be treated as business expenses if the conditions laid down in paragraph 49 are satisfied. Lump transfers of accumulated subscriptions, with or without interest thereon made after the Provident Funds Relief Act, 1929, came into force, are governed by section 58-K which is specifically made applicable to unrecognized as well as to recognized funds.

CHAPTER X.

Miscellaneous

59. (1) The Central Board of Revenue may, subject to the control of the Governor General in Council, make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income. Such rules may be made for the whole of British India or for such part thereof as may be specified.

(2) Without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the manner in which, and the procedure by which, the income, profits and gains shall be arrived at in the case of—
 - (i) incomes derived in part from agriculture and in part from business ;
 - (ii) insurance companies ;
 - (iii) persons residing out of British India ;
- (b) prescribe the procedure to be followed on applications for refunds ;
- (c) provide for such arrangements with His Majesty's Government as may be necessary to enable the appropriate relief to be granted under section 27 of the Finance Act, 1920, or under section 49 of this Act ;
- (d) prescribe the year which, for the purposes of relief under section 49, is to be taken as corresponding to the year of assessment for the purposes of section 27 of the Finance Act, 1920 ; and
- (e) provide for any matter which by this Act is to be prescribed.

(3) In cases coming under clause (a) of sub-section (2), where the income, profits and gains liable to tax cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which, in the opinion of the Central Board of Revenue, is unreasonable, the rules made under that sub-section may—

(a) prescribe methods by which an estimate of such income, profits and gains may be made, and

(b) in cases coming under sub-clause (i) of clause (a) of sub-section (2), prescribe the proportion of the income which shall be deemed to be income, profits and gains liable to tax, and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.

(4) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication.

(5) Rules made under this section shall be published in the Gazette of India, and shall thereupon have effect as if enacted in this Act.

60. (1) The Governor General in Council may, by notification in the Gazette of India, make an exemption, Power to make ex-
emptions, etc. reduction in rate or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons.

(2) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, [or by reason of his having received in any one financial year salary for more than 12 months,] his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Governor General in Council may grant such relief as he may think fit.

RELIEF IN RESPECT OF INCOME-TAX FROM SALARY.

The provision for granting relief under sub-section (2) of

section 60 was made by Act XXII of 1930 in order "to provide for cases of hardship which occur occasionally".

EXEMPTIONS.

In addition to the exemptions mentioned in section 4(3), the following further exemptions have been made by the Governor General in Council in exercise of the powers conferred by section 60 of the Act.

The following classes of income shall be exempt from the tax payable under the said Act and they shall not be taken into account in determining the total income of an assessee for the purposes of the said Act :—

(1) The official allowance which an agent of a Prince or State in India, who has been duly accredited to represent the Prince or State for political purposes in any place within the limits of British India, receives as such agent in British India from the Prince or State, and the official salaries and fees received in India from their Governments by foreign Consuls, whether *de carriere* or not and whether foreign or British subjects, and by representatives and consular employees (whether foreign or British subjects) who are members of a permanent consular service.

(The latter portion of this exemption applies only to salaries and fees received from their Governments and not to any other income, profits or gains, accruing or arising to them or received by them in British India).

(1-A). Sums paid in pursuance of Article 3 of the agreement, dated the 17th August, 1825, between the British Government, and the king of Oudh.

(1-B). Income derived from Buatax defined in clause (C) of section 2 of the Teri Duer Regulation 1902.

(2) The salary and allowances paid by a State in India during the period of deputation to any person deputed by the State for training in British India.

(3) Scholarships granted to meet the cost of education.

(4) Such portion of the income of a member of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Royal Indian Marine as is compulsorily deducted from his salary by the orders or with the approval of Government for payment to a mess, wine or band fund.

(5) The allowances attached to—

The Victoria Cross ;

The Order of British India ;

The Indian Order of Merit.

(5-A) The interest on Government securities held by or on behalf of, Ruling chiefs and Princes of India, as their private property.

(6) *Jangi Inams* awarded to Indian officers, Indian other ranks and followers in respect of services in the Great War.

(7) *Deleted.*

(8) The yield of Post Office cash certificates.

(9) The interest on deposits in the Post Office Savings Bank.

(10) The income of a University or other educational institution existing solely for educational purposes and not for purposes of profit.

(11) The salary of His Majesty's Trade Commissioners in India.

(12) The salary of the Canadian Trade Commissioner in India at Calcutta.

(13) The salary of the Trade Commissioner in India of the United States of America, and of any members of his staff who are citizens of the U. S. A. and have been detailed for duty with the said Trade Commissioner by the Government of the said States.

(13A) The salaries of the correspondent of the International Labour Office, New Delhi and his staff.

(14) The gratuities which are granted to officers and others in respect of wounds or injuries received either in action or in the performance of duty otherwise than in action in His Majesty's Naval, Military or Air Forces, British or Indian or in the Auxiliary Force, India, or in the Indian Territorial Force or in the Royal Indian Marine.

(15) The gratuities which are granted to the widows, children or other relative of officers and others who are killed in action or suffer violent death due directly or wholly to war service, are killed or died of injuries sustained on flying duty or while being carried on duty in air craft under proper authority, or die within seven years from wounds or injuries so received.

(16) Retiring gratuities with increments thereto granted under the rules framed by the Secretary of State in Council in pursuance of the Royal Warrant dated the 25th April, 1922.

(17) Gratuities sanctioned under Army Instruction (India) No. 223 dated the 21st March, 1922, for regular Royal Engineer Officers on the Indian establishment belonging to the Survey or Railway Department and regular Indian Army Officers of the Survey Department.

(18) Gratuities granted to Assistant Surgeons of the Indian Medical Department in Military employment declared surplus

to establishment under Army Instruction (India) No. 516 of 1924.

(19) Gratuities which are granted by the Railway Board or under general orders issued by the Railway Board to employees on their retirement or discharge from service or in the event of their death while in service, to their widows or children or other members of their families.

(20) Extraordinary gratuities which are granted by Government or by Railway Administrations to Government or railway servants (or to their widows, children or other representatives, as the case may be) who are injured or killed in the execution of their duties or who suffer injury or death owing to devotion to duty.

(20-A) Gratuities granted to the staff of the Indo-European Telegraph Department in pursuance of the Resolution of the Secretary of State for India in Council dated the 24th June, 1930.

(20-B) Gratuities granted under paragraph 6 of Army instruction (India), No. 101, dated the 9th September, 1930.

(21) The allowance or salary paid in the United Kingdom to officers of Government on leave or duty in that country whether such allowance or salary is paid in sterling in the United Kingdom or by means of negotiable rupee drafts on a bank in India.

(22) The leave allowance or salary drawn from any colonial Treasury by officers of Government on leave or duty in the Colony.

(23) Leave salaries or leave allowances paid in the United Kingdom or in a Colony, to officers of local authorities, or to the employees of Companies, or of private employers on leave in the United Kingdom or in such Colony.

(24) Vacation salaries paid in the United Kingdom or in a Colony to Judge of High Courts or of Chief Courts, to Judicial Commissioners, or to other officers of Government, when on vacation therein.

(25) The pensions of officers of Government residing out of India drawn from any Colonial Treasury or paid in the United Kingdom, whether such pensions are paid in sterling or by means of negotiable rupee drafts on a bank in India.

(26) The salaries of the light house keepers of light houses in the Red Sea.

(27) The pensions paid in the United Kingdom or in a Colony to officers of local authorities or employees of companies or private employers, such officers or employees being resident out of India.

(28) The interest on Mysore Durbar Securities.

(29) Pensions granted to officers of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Auxiliary Force, India, or of the Indian Territorial Force, or of the Royal Indian Marine or to members of the Indian Police Forces or to Civil Officers serving in a Civil Capacity with a Military Force in respect of wounds or injuries received in action or in the performance of their duties as members of such force otherwise than in action.

(30) Pensions granted to members of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Auxiliary Force, India, or of the Indian Territorial Force, or of the Royal Indian Marine or to Civil Officers serving in a Civil Capacity with a Military Force, who have been invalidated from service with such forces on account of bodily disability attributable to, or aggravated by, such service.

(31) Value of rations issued in kind or money allowance paid in lieu thereof, to any officer or other rank in His Majesty's Naval, Military or Air Forces, British or Indian or in the Auxiliary Force, India, or in the Indian Territorial Force, or in the Royal Indian Marine.

(32) Value of rent-free quarters occupied by, or money allowance paid in lieu thereof to, Indian officers, British Warrant and non-commissioned officers and men of His Majesty's Military or Air Forces, and British and Indian Warrant officers of His Majesty's Naval and Marine Forces; in all cases irrespective of whether the individual concerned is married or single.

(33) Conservancy allowance granted in lieu of free conservancy to non-departmental Warrant and non-commissioned officers of the Indian Unattached List, departmental non-commissioned officers of the India Unattached List not in receipt of consolidated rates of pay and Warrant and non-commissioned officers of the permanent staff of the Auxiliary and Territorial Forces.

(34) The value of the free education provided for the children of British Warrant and non-commissioned officers and any grants-in-aid made to British Warrant and non-commissioned officers in lieu of the provision of free education for their children.

(35) The income of persons, other than persons in the service of the Government, residing in the district of Angul.

(35.A) The income of indigenous hillmen, other than persons in the service of Government residing in the following arrears of Assam :—

The Naga Hills District,

The Lushai Hills District.

The Sadiya Frontier Tract.

The Balipara Frontier Tract.

The Lakhimpur Frontier Tract.

The Garo Hills.

The Jowai sub-division of the Khasi and Jaintia Hills District and

The North Cachar Hills in the district of Cachar.

(36) The perquisite represented by the right of any of the officers specified in the annexed list to occupy free of rent as a place of residence any premises provided by Government.

List of officers.

The Governor General.

The Commander-in-Chief.

The Governor of a Governor's Province.

The Chief Commissioner of any of the following Provinces, namely :—

British Baluchistan,

Delhi,

Ajmer-Merwara,

Coorg,

and the Andaman and Nicobar Islands, Aden and any first class Resident in the Political Department.

(37) Such part of income in respect of which tax is payable under the head "Property" as is equal to the amount of rent payable but not paid by a tenant of the assessee, where—

(a) the tenancy is *bona fide* ;

(b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property ;

(c) the defaulting tenant is not in occupation of other property of the assessee ; and

(d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent.

(38) The lump grants made by Government to the Indian Church—

(1) for the provision of episcopal supervision and ministrations ;

(2) for the payment of allowances to clergymen entertained in lieu of Chaplaincies reduced ; and

- (3) in lieu of the grants-in-aid at present given for the entertainment of clergymen of the Additional Clergy Society under Articles 602 and 603 of the Civil Service Regulations.

(39) When in any year an employee participating in a recognised provident fund has ceased to be an employee of the employer maintaining the fund and has been declared by such employer not to be eligible to receive the whole of the accumulated balance due to him, so much of his income as is assessable for that year shall be exempted from income-tax and shall be excluded from the computation of his total income for the purposes of the said Act as is equivalent to so much of the accumulated balance due to him as has not been paid or is not payable to him, and if such amount exceeds the amount of his income in that year, so much of his income in the following year or years as is equal to the amount of such excess shall be so exempted and excluded in such year or years.

17-A. *Exemptions—Incomes included in "total income".*—The following classes of income shall be exempt from the tax payable under the said Act, but shall be taken into account in determining the total income of an assessee for the purposes of the said Act :—

- (1) The interest on Government securities purchased through the Post Office, and held in the custody of the Accountant-General, Posts and Telegraphs.
- (2) Sums received by an assessee on account of salary, bonus, commission or other remuneration for services rendered, or in lieu of interest on money advanced, to a person for the purposes of his business.

where such sums have been paid out of, or determined with reference to, the profits of such business.

and, by reason of such mode of payment or determination, have not been allowed as a deduction but have been included in the profits of the business on which income-tax has been assessed and charged under the head "business" :

Provided that such sums shall not be exempt from the payment of super-tax unless they are paid to the assessee by a person other than a company and have already been assessed to super-tax.

- (3) The profits of any Co-operative Society other than the Sanikatta Salt-owners' Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act, 1912 (II of 1912), the Bombay Co-operative Societies Act, 1925,

(Bombay Act VII of 1925), or the Burma Co-operative Societies Act, 1927 (Burma Act VI of 1927), or the dividends or other payments received by the members of any such Society on account of profits.

The exemption which extends both to income-tax and super-tax applies only to "profits" in the strict sense of the word as used in the Act and does not include "income" derived by Co-operative Societies from interest on securities or dividends. The Societies whose income liable to income-tax is not taxable at the maximum rate or who have no income liable to tax should apply to the Income-tax Officer concerned for the issue of exemption certificates authorising persons paying interest on securities not to deduct any tax at source or to deduct tax at a lower rate than the maximum, as the case may be.

Where a Co-operative Society incurs a loss under any head of income that has been exempted from tax by notification under section 60 (1) of the Act, such loss may be set off under section 24 against any income that is not so exempted.

- (4) Such part of the profits or gains of a firm which has discontinued its business, profession or vocation as is proportionate to the share of an assessee in the firm at the time of such discontinuance, if income-tax has at any time been charged on such business, profession or vocation under the Indian Income-tax Act, 1918 (VII of 1918), or if an assessment has been made on the firm in respect of such profits or gains under sub-section (1) of section 25 of the Indian Income-tax Act, 1922 (XI of 1922).

The above exemption applies only to income-tax and not to super-tax.

Apart from the particular cases mentioned in this paragraph, the incomes or portions of incomes exempted under section 4 of the Act and under the orders of the Governor General in Council under section 60 of the Act referred to in paragraph 17 are not only not subject to income-tax or super-tax, but they are also not to be taken into account in determining the rate of tax on other income; they are excluded from consideration altogether.

- (5) So much of the income of any Investment Trust Company as is derived from dividends paid by any other Company which has paid or will pay super-tax in respect of the profits out of which such dividends are paid.

Explanation.—For this purpose an investment trust

company means a company in respect of which the Governor General in Council is satisfied that :—

- (i) it is company having for its principal business the acquisition and holding of investments in the stocks, shares, bonds, debentures or debenture stocks of other companies or in securities issued by public authorities.
- (ii) it is not a company formed for the purpose of, or engaged in, acquiring or exercising control over any other company or group of companies or enabling any other persons to acquire or exercise such control.
- (iii) it is a company deemed under clause (b) of the Explanation to sub-section (2) of section 23-A, of the said Act, to be a company in which the public are substantially interested.

The above exemption applies only to super-tax and not to income-tax.

17-B. *Exemptions—Indian Finance (Supplementary and Extending) Act, 1931.*—The classes of persons specified in the schedule below are exempt, under section 60 of the Act,—

- (a) from the operation of section 7 or section 8, of the Indian Finance (Supplementary and Extending) Act, 1931, in respect of income of the year 1930-31 or the year 1931-32 chargeable under the head "Salaries" and
- (b) from the operation of section 7 or section 9, of the Indian Finance (Supplementary and Extending) Act, 1931, in respect of income of the year 1931-32 or the year 1932-33 chargeable under the head "Salaries".

SCHEDULE.

Classes of persons exempted.

1. All persons in the service of the Crown in India (including persons for the time being on foreign service as defined in the Civil Service Regulations or the Fundamental Rules as the case may be) or holding any office the emoluments of which are defrayed or other charge upon the property irrespective of the purpose for which the encumbrance was created.

The proviso to sub-section (1) of section 9 has no application to interest on money borrowed for business purposes even though such money may have been borrowed on the security of the assessee's property.

CO-OPERATIVE SOCIETY.

In *In the matter of Madras Central Urban Bank, Limited*, 118 I.C. 107 : 52 Mad. 640, it was held that where a co-operative society invest money under Government order interest received therefrom is liable to tax in view of the fact that the said investment is no part of its business.

But in the *English and Scottish Co-operative Society*, 1929 M. W. N. 534, it was held that the society was a mutual co-operative society and earning no profit and was, therefore, not chargeable to income-tax.

NOTIFICATION No. 11

Dated 4th April 1931.

(a) For the purposes of any assessment to be made for the year ending the 21st March 1932, the rate of income-tax applicable to such part of the total income of an assessee as is derived from salaries or from interest on securities shall be the rate specified in the Indian Income-tax Act, 1931 (XV of 1931), as applicable to a total income equal to that of the assessee.

(b) For the purposes of refunds under sub-section (1) or sub-section (3) of section 48 of the said Act in respect of dividends declared during the year ending the 31st March 1931 or of payments made during the said year of interest on securities or salary, the rate applicable to the total income of the person claiming refund shall be the rate specified in the Indian Finance Act, 1930 (XV of 1930), as applicable to a total income of the same amount.

For exemptions under Indian Finance (supplementary and Extending) Act, 1931, Vide the Finance Act, dealt hereafter.

61. Any assessee, who is entitled or required to attend before any income-tax authority in connection with any proceedings under this Act, may attend either in person or by any person authorised by him in writing in this behalf.

Appearance by authorised representative.

PERSONAL ATTENDANCE OF THE ASSESSEE.

While section 23(2) empowers the Income-tax Officer to require a person making a return to attend at his office, under the provisions of section 61 any person required or entitled to attend before any Income-tax authority may either attend in person or be represented by a person duly authorised by him in writing while there is no obligation on an assessee to attend in person at any stage of the assessment proceedings or before any Income-tax authority in connection with any

proceeding or under the Act, and while he may be represented at any such proceedings by any person he pleases to authorise in writing, failure to attend or to be so represented has the result that the assessee loses any right of appeal against the assessment.

It should, however, be particularly noted that the provisions of section 61 merely refer to attendance. Returns and verifications required under the Act must be signed either by the assessee himself or by any duly authorised agent.

It is desirable that tax-payers should be allowed to use whatever agency they please for the purpose of representing their case; and whatever person they authorise to represent them whether he be an employee, an accountant or any other person, has presumably been selected by them as the person having the best knowledge of their accounts and financial position, and such person is entitled to appear before any Income-tax authority and to give explanations and produce evidence regarding any points of doubt that may arise.

VAKILS.

In *In the matter of Birendra Kishore Manikya* 48 Cal. 766 : 25 C. W. N. 80, the Full Bench of the Calcutta High Court held that vakils and not solicitors, who are not vakils, are entitled to be heard and Counsels can properly be instructed only by a vakil.

SCOPE.

Section 61 provides that when an assessee is called upon to comply with any requisition under the Act, he can attend personally or by any representative.

A representative can appear under a letter of authority. Lawyers of course appear by virtue of the power given to them. They can also appear as agents, but having regard to their vocation they should not be allowed to appear as agents. So far as Barristers are concerned, power or vakalatnama is not required. Other lawyers are entitled to appear by presenting a duly stamped power. Muktears as a class are not entitled to appear by presenting Muktearnamas, but Revenue Agents can. All Muktears are not Revenue Agents.

62. A receipt shall be given for any money

Receipts to be paid or recovered under this Act.
given.

63. (1) A notice or requisition under this Act may be served on the person therein named either by Service of notices. post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908.

(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or to the manager, or any adult male member of the family and, in the case of any other association of individuals, be addressed to the principal officer thereof.

METHOD OF SERVING NOTICES OR REQUISITIONS.

Under section 63 of the Act a notice or requisition may be served either by post or in any manner provided for the service of summons under the Code of Civil Procedure. The words "by post" under section 27 of the General Clauses Act, X of 1897, mean "by registered post."

Section 63(2) specially provides that in the case of firms or Hindu undivided families a notice or requisition may be addressed to any member of the firm or to the managers or any other male member of the family. (Para 104 of the I. T. M.)

PROCEDURE FOR SERVICE.

Section 63(1) provides that a notice or requisition may be served either by post or as if it were a summons issued by a court, under the Civil Procedure Code.

Section 27 of the General Clauses Act (Act X of 1897) lays down that "by post" means by registered post. It may not be out of place to quote section 27 of the G. C. Act. It runs thus :—

"When any Act of the Governor General in Council or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expression is used, there, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Besides service by post, notices or requisitions may be served in accordance with the provisions laid down in the Civil Procedure Code for service of summons. Order 5 of the Civil Procedure Code, Rules 10 to 20, prescribe the procedure to be followed therein.

The mode of service mentioned in section 63, is permissive and not exhaustive and as such it is open to the I. T. O. to adopt any method of service that is effective, so long the assessee is not prejudiced thereby. Thus a signature on the margin of an order sheet would be equivalent to due service of

notice—*Ram Khelawan Ugamlal v. Commr. of Income-tax* 7 Pat. 852.

Section 63(2) provides that any such requisition may be served on any member of the Firm or to its Manager or on any adult male member of the H. U. F.; whereas in the case of other Association of Individuals, on the Principal Officer.

SERVICE ON FIRM AND FAMILY.

Section 63(2) prescribes the procedure to be followed in effecting services of notices or requisitions on a Firm or a H. U. F.

There is no provision, express or implied by which notice or requisition may be served on the Firm itself or on the H. U. F.

In order to make the service of a notice or a requisition valid, it must be served on any of the partners of a Firm, or to any other adult male member of a H. U. F. A notice or requisition, issued in the name of a Firm or a H. U. F. cannot be regarded as a proper notice and service of such notice is an illegality.

In the case of *Thillai Chidam baran Nadar* A. I. R. 1925 Mad. 149, Justice Countts Trotter has laid down the principle of service on unregistered Firms. It is said that by the ordinary law and by virtue of section 63(2) of the Act, each partner is an agent for all the others in the Firm and a requisition under section 23(2) need not be made on the identical partner who made the Return u/s 22(2).

It therefore follows that in the case of a Firm, notice may be served on any one of the partners and at the same time compliance of any requisition can be legally made by any other member and not necessarily by the partner on whom the notice was served.

Section 46 of the Indian Income-tax Act of 1918 does not require that service must be on the person named in the notice. It may be served in any other way as laid down in order 5 of the Civil Procedure Code—*In re : Ismile Bhai*, 68 I.C. 623.

Similarly service on any adult male member of a H. U. F. is a good service. But when a joint family carries on business through an "Agent" service on the said "Agent" is good service. The use of the word "may" in section 63(2) confirms the view that section 63(2) is not exhaustive—*Rama Nath Chettyar*, 2 I. T. C. 474.

A notice u/s 22(2) served on the adult son of an assessee is good service within the meaning of section 63 of the Act. Order 5, Rule 15 of the Civil Procedure Code directs that where the defendant is absent or cannot be personally served, service may be made on any adult male member of the family of

the defendant who is residing with him—*Mohori Lal v. Commr. of Income-tax, U. P.*, 6 I. T. C. 104.

ON AGENT.

That section 63(2) provides alternative method of service is manifest also in the case of *Commissioner of Income-tax v. A. A. N. Chettiar Firm*, 110 I. C. 29 where service on the agent of a H. U. F. was considered a valid service.

Order 3, Rule 2, Civil Procedure Code defines "recognised agent" and rule 3 provides that processes served on the recognised agent of a party shall be as effectual as if the same had been served on the party in person. Order 5, Rule 12 provides that service shall, wherever it is practicable, be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on the agent shall be sufficient. Order 3, Rule 6 provides that, besides the recognised agents described in Rule 2, any person may be appointed as agent to accept service of process, but such appointment must be made by an instrument in writing signed by the principal—*Commissioner of Income-tax v. Buriram Rodmal*, A. I. R. 1934 Nag 175.

Thus service of notice on the agent is a good service, if authority to receive it can be implied from the nature of the works carried on by the agent on behalf of the principal; and in the case of a recognised agent carrying on business in the name of the principal, that would imply authority to accept such notices, because the acceptance of notice is a matter which is connected with such trade or business. A notice u/s 22(2) need not therefore be served personally on the assessee and service of notice on the recognised agent is good service—*In re Sundar Lal* A. I. R. 1931 Pat 282.

A notice u/s 22(2) need not be served personally on the assessee and service at assessee's business premises, on an agent exercising authority, although not authorised in writing is valid service. In the case of a recognised agent, authority, to accept ?

GUIDING PRINCIPLE OF SERVICE.

Under the Indian Income-tax Act, we find that each assessee has got a status of his own e.g., Individual, H. U. F. and so on. The first essential in the Act is to effect service. It is advisable to mention specifically the status in the notice e.g., when a notice is served on the member of a H. U. F. specific mention has got to be made in the notice that it relates to the H. U. F. otherwise the assessee may comply with the requisition by stating that he has got no individual income or that his individual income is below the taxable minimum.

But so far as Firm or H. U. F. is concerned, section 63(2) does not authorise any service on the Firm or on the Family itself; the proper course is to address a member as a partner of a Firm or to address an adult male member as a coparcener of a H. U. F.

Presumption raised by section 27 of the General clauses Act, if rebuttable against service of notice :—

Under section 63 of the Indian Income-Tax Act, the I. T. O. has the option to serve a notice either by post, which under section 27 of the G. C. Act X of 1897, means “by registered post” or as if it were a summons issued under the Civil Procedure code.

Section 27 of the G. C. Act says : “service shall be deemed to be notice”. Sec. 22 is held to be implied—*Himat Ram Pali Ram v. Commissioner of Income-tax, B & O.* 5 I. T. C. 134.

ADJOURNMENT.

There is no provision in the Act to inform the assessee of dates by registered post. Section 63(1) speaks of “a notice or requisition” and unmistakably it refers to notices under sections 22(2), 23(2), 22(4), 29, 34, 37 and 43 and to no other notice or requisition.

When a case is adjourned to some other date, it is for the assessee to get the extended date and the assessee cannot question the authority of the I. T. O. if the date is communicated by ordinary post.

In the case of *perianna pillai* 122 I. C. 149, it has been held that when a prayer for extension of time is made by post or by telegram, intimation of adjournment by ordinary post is valid and failure to comply with the requisition makes the assessee liable to be assessed summarily.

Ordinarily it may be the duty of the assessee who applies for an adjournment to find out the date fixed, but when the I. T. O. tells the assessee that an adjournment will be allowed and that the adjourned date will be intimated to him, it is not incumbent on the assessee to find out that date but that he is entitled to await the promised information—*Commissioner of Income-tax v. Baxiram Rodmal* A. I. R. 1934 N 175.

The G. C. Act Says : “The service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document.” As soon as the act of posting is completed, service is deemed to be effected and nothing that subsequently happens can alter the position. But if the presumption is conclusive or in other words if the evidence afforded by “properly addressing, prepaying or posting by registered post” be conclusive evidence of service of notice, the fact that notice has been returned unserved will not

be admissible as evidence of the fact of non-service. This can hardly be considered a right rule and hence the presumption raised is rebuttable—*De Souza v. Commissioner of Income-tax*, U. P. 6 I. T. C. 134.

SERVICE ON MINOR.

When a notice purported to have been issued u/s 22(2) is served on the assessee's minor son who is found to be possessed of ordinary intelligence and is living with his father, and is found to be regularly receiving his father's notices, it is legal to construe the minor son as agent of his father and service on such minor is valid in law—*In re: L. C. De Souza*, A. I. R. 1932 All. 374.

64. (1) Where an assessee carries on business at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the business is carried on in more places than one, by the Income-tax Officer of the area in which his principal place of business is situate.

(2) In all other cases an assessee shall be assessed by the Income-tax Officer of the area in which he resides.

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner, or, where the question is between places in more provinces than one, by the Commissioners concerned, or, if they are not in agreement, by the Central Board of Revenue :

Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views.

(4) Notwithstanding anything contained in this section every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed.

THE DETERMINATION OF THE INCOME-TAX OFFICER BY WHOM AN ASSESSMENT IS TO BE MADE.

While for the reasons given in paragraph 24, every Income-tax Officer is, under section 64(4), vested with all the power

conferred by or under the Act on an Income-tax Officer in respect of any income, profits or gains accruing or arising or received within the area for which he is appointed, the question of the Income-tax Officer by whom a particular assessee is to be assessed has to be determined in accordance with the provisions of sub-sections (1) to (3) of section 64. Under those provisions, if an assessee carries on business, he has to be assessed by the Income-tax Officer of the area in which his principal place of business is situate; in all other cases an assessee has to be assessed by the Income-tax Officer of the area in which he resides. Where there is any doubt or dispute on any such question, the question is to be finally determined by the Commissioner of the province in which the areas are situate. Where the areas are situate in more than one province, the question is to be determined by the Commissioners of the provinces concerned in consultation, and where two Commissioners are not in agreement, the question will be determined by the Central Board of Revenue. In all cases of dispute, however, before any such question is determined, the assessee must be given an opportunity of representing his views.

If an assessee whom an Income-tax Officer is seeking to assess challenges his jurisdiction on the ground that the assessee's principal place of business or residence is in a different income-tax circle, the Income-tax Officer should at once report the case to the Commissioner for orders. Even if the Income-tax Officers of the various circles concerned are in agreement as to the proper place of assessment, they are not competent to decide finally where the assessment should be made unless the assessee acquiesces in their decision. If he disputes it and the alternative places of assessment are all in the same province, the Commissioner of Income-tax of that province can finally determine the place of assessment. If alternative places of assessment are not situated in the same province, it is not necessary for the Commissioners to refer the case to the Central Board of Revenue, unless they hold different views.

It is not necessary for an assessee who disputes the jurisdiction of the Income-tax Officer to move the Commissioner himself or to ask the Income-tax Officer to do so. Whatever the assessee does or purposes to do, therefore, the Income-tax Officer should take the Commissioner's orders at once whenever his jurisdiction is challenged.

As the question of jurisdiction must be decided before any assessment can be made, the Income-tax Officer and Commissioners should deal with all questions arising under section 64 as expeditiously as possible. (Para 105 of the I. T. M.)

DUTY OF I. T. O. WHEN JURISDICTION IS CHALLENGED.

Whenever the jurisdiction of the I. T. O. is challenged by an assessee regarding the principal place of business, no matter whether the I. T. O. of the principal place of business is in agreement or not with the I. T. O. of the area outside his jurisdiction, it is incumbent on the I. T. O. to report the matter at an early date to the Commissioner.

The decision for or against the assessee by the I. T. O. is not binding on the assessee, for the I. T. O. is not the final authority in the matter, but if the assessee acquiesces in the decision, the I. T. O. is competent to decide the matter himself.

Sub-section (3) of section 64 provides that where any question arises as to the place of assessment, such question shall be determined by the Commissioner of the Province, but where principal place of business is in several provinces, the Provincial Commissioners concerned are to arrive at an adjudication and in case of difference, the Central Board of Revenue shall decide the issue.

It is not necessary for an assessee who disputes the jurisdiction of the I. T. O. to move the Commissioner himself or to request the I. T. O. to do so. Whatever the assessee does or proposes to do, therefore, the I. T. O., should take the Commissioner's orders at once, whenever his jurisdiction is challenged.

Section 64(3) therefore does not give the I. T. O. any authority to dispose of the question. All that the law enjoins on the I. T. O. is to refer the matter at once to his Commissioner. The assessee may or may not move the Commissioner but the I. T. O. shall. If he proceeds to decide the question himself and then makes an assessment if the question has been determined finally, the assessment is illegal and *ultra vires*.

As the I. T. O. is privy to the question which has arisen, it is reasonable that he should immediately communicate with the Commissioner. The power of the I. T. O. is limited, he cannot decide the question himself neither he can make an assessment prejudging the issue.

PLACE OF ASSESSMENT—TESTS.

Section 64(1) provides that where an assessee carries on business at any place, he shall be assessed by the I. T. O. of the area in which he carries on his business. But when the business is in more places than one, before the I. T. O. of the area where the principal place of business is situate. In all other cases, an assessee is to be assessed by the I. T. O. of the area in which he resides.

JURISDICTION, CONCURRENT OR NOT.

Under section 5 of the Act, the I. T. O. derives his power and jurisdiction to make assessments. Section 64 deals merely with the place of assessment and lays down the procedure, when his jurisdiction is challenged.

As a matter of fact, Income-tax Officers can have no concurrent jurisdiction, provided it does not create anomalous results.

Section 64 provides that where an assessee carries on his business, he shall be assessed by the I. T. O. of the area in which that place is situate.

It further provides that in other cases, an assessee shall be assessed by the I. T. O. of the area where he resides.

But where an assessee has business in more places than one, he shall be assessed by the I. T. O. of the principal place of business. Apparently, therefore, the I. T. O. of the principal place of business is the assessing authority of an assessee who has business in more places than one, no matter if some of the places are outside his jurisdiction. But sub-section (4) of section 64 provides : "Notwithstanding anything contained in this section, every I. T. O. shall have all the powers conferred by or under this Act on an I. T. O. in respect of any income, profits or gains, accruing or arising or received within the area for which he is appointed."

Consequently therefore where an assessee has some place of business, outside the jurisdiction of the I. T. O. of the principal place of business, the Income-tax Officer of the branch business, by virtue of section 64(4) has authority to assess the income within his area and a clash of jurisdiction is inevitable, simply because the I. T. O. of the principal place of business shall make an assessment of an assessee of all income, including the income derived from his business outside the jurisdiction of the I. T. O. of the principal place of business.

It may therefore be pertinently inquired if the jurisdiction of the I. T. O. of the principal place of business is ousted by virtue of sub-section (4) of section 64.

The power of the I. T. O. of the principal place of business is not ousted under section 64(4) to assess the income of any business outside his area. The powers are concurrent and if the assessee fails to comply with the notice under sections 23(2) and 22(4), an assessment u/s 23(4) is not bad in law.

In *Lachman Prasad Baluram*, 47 All. 631, the Allahabad High Court has held that the jurisdiction is concurrent :

"In our opinion the jurisdiction of the I. T. O. of the area

in which the principal place of business is situated, is not ousted. The jurisdiction is concurrent. Under section 64 the I. T. O. of the principal place of business has the duty of assessing the whole of the income derived from the principal place of business as well as the various branches. By sub-section (4) every I. T. O. has also jurisdiction to exercise the powers of an I. T. O. with regard to the profits arising in that area.

It is of course understood and ought to be understood by the authorities that the I. T. O. of the principal place of business cannot exercise his powers oppressively so that persons willing to submit to the requirements of the I. T. O. of the particular area in which the branch is situated shall not be deprived of an opportunity of supplying him with all proper materials, but exceptional cases may require exceptional remedy."

It must be understood that the I. T. O. of the principal place of business is the assessing authority including the income of the branch, whereas the I. T. O. of the branch area is merely the reporting officer. Although no simultaneous assessments should be made at different places on the same person, there is nothing illegal in an I. T. O. of one place giving an estimate of profits made by the assessee at that place and forwarding that estimate to the I. T. O. of another place—*In re : Ram Khelawan Ugamlal v. Commissioner of Income-tax*, 114 I. C. 2111.

DUTY OF THE ASSESSEE.

Whenever the jurisdiction of I. T. O. is challenged by an assessee, the duty of the assessee is simply to raise that question before the I. T. O. There is nothing in the Act that an application is necessary to raise the question—such a question therefore can be raised orally, but it is always safe to put it in writing as it is the duty of the I. T. O. to set the commissioner in motion by referring the question *suo motu*. The duty is thrown upon the I. T. O. of securing the determination of the question and before any adjudication, he has every right to refuse to comply with any requisition.

Can the finding of the I. T. O. or the Commissioner be overruled by the High Court u/s 66 :—

In one sense of that embarrassing question, the answer is a definite "no". The High Court has indeed no power to overrule anything done by the I. T. O. or the Commissioner.

Under section 66(2) when a question of law arises in an order under section 31, 32 or 33A (or under section 33 to a limited extent), the assessee may require the Commissioner to state a case or in case of refusal by the Commissioner, the High

Court may be approached to require the Commissioner to state a case for reference to the High Court.

In *Dinanath Hemraj*, 49 All. 616, the question put by the Commissioner appears to be misleading because it assumes that the High Court was asked to overrule a decision which in the face of section 64 he had no power to make and it assumes that special procedure etc. under section 64 had been adopted, when it is admitted that it had not.

Their Lordships of the High Court held : "we are compelled to hold in this case that there being a total failure on the part of the Income-tax authorities to apply to the plain provision of section 64, on the other hand an illegal assumption of authority in Cawnpur, the existence of an alternative remedy under section 64(3) does not affect this case, and cannot be held to be a bar to the rights of the appellant to have a case stated and the jurisdiction of the High Court to answer those questions in the way it holds that they ought to be answered."

POWER AND JURISDICTION OF THE INCOME-TAX OFFICER.

The I. T. O. of the principal place of business has the duty of assessing the whole income, including income of the branch business outside his territorial jurisdiction. He can call for the accounts etc. of the branch business, outside his area, but it is not necessary to serve separate notice u/s 22 on the branch area.

Whenever a Return u/s 22 is submitted, the Return in question must show the total income from all business and failure to include the branch income may result in treating the so-called Return as "No Return" and an assessment u/s 23(4) for that defect alone is justified.

Similarly where an assessee does not comply with a requisition u/s 22(4) by not producing his branch accounts, specifically called for, by the I. T. O. of the principal place of business, the I. T. O. may assess him u/s 23(4)—*In re Lachman Prasad Baburam*, A. I. R. 1925 All. 385.

The Income-tax Officer has jurisdiction to call for return of income of the branch business of other places. This point is really covered by an authority of the Allahabad High Court e.g., *In the matter of Lachman Prasad Baburam*, A. I. R. 1925 All. 385—that an I. T. O. of the principal place of business has jurisdiction over the branch accounts ; section 64(4) does not militate against this view. It has been enacted only to safeguard the powers of the Local Officer, in case it might be contended that subsection (1) of section 64 took away that power—*In re Abheygram Chaudhali*, A. I. R. 1933, All. 197 (vide also the unreported case of *Biseswar Prasad Parsottamdas of Pitra kunda, Benares*.)

Generally the I. T. O. of the area where the branch business is situate, issues a notice u/s 22(4) for compliance before him of any branch account. After scrutiny he sends his report to the I. T. O., of the principal place of business, who may either accept it or reject it. He is not bound to accept the report, but in that case he shall have to examine the accounts, if produced.

But what would be the position when the I. T. O. of the branch area submits a highly estimated report for non-compliance as to production of books of accounts; is the I. T. O. of the principal place of business bound to examine the accounts or to make an estimated assessment u/s 23(4) ?

To me it seems that in all cases of this nature, the I. T. O. is bound to examine branch accounts outside his jurisdiction, as the return submitted by the assessee is for the total income of all business including the branch and as the I. T. O. has issued notice u/s 23(2) & 22(4), the I. T. O. shall have to examine the accounts produced and to record the evidence adduced by the assessee.

EFFECT OF ASSESSMENT BEFORE REFERENCE TO THE COMMISSIONER.

Where an assessment is made, when the question u/s 64 is subjudice, any such assessment without determination of the question is tantamount to doing something not authorised by the Act, in other words, an illegality.

The Allahabad High Court in the case of *Dipamath Hemraj v. Commr. of Income-tax*, 25 A. L. J. 225, A. I. R. 1927 All. 2001, came to the conclusion that an assessment by the I. T. O. pending reference to the Commissioner under the provision of section 64 is unwarranted. It has been held:

"It is quite clear, therefore, that in October, 1924 a question had arisen within the meaning of the section. It is equally clear that both parties are either unaware of or ignored section 64(3). The question having arisen, the Income-tax Officer, subject to a proviso hereafter to be mentioned, had no jurisdiction to decide the question of the principal place of business, and certainly no jurisdiction to assume it, and no right to assess the firm on the profits of the whole business, as though its principal business were in Cawnpore, a question which was still undecided. The Act provides that where the question about the principal place of business is between places in more provinces than one, it shall be determined by Commissioners concerned, and if they are not in agreement, by the Central Board of Revenue, and that the assessee shall have an opportunity of representing his views. The Act does not go to say who shall set the Commissioner in motion, but the reasonable inference to

be drawn from the language used is that this is the duty of the Income-tax Officer. The sub-section itself contains a direct reference to the assessee and provides that the assessee shall have an opportunity of representing his views before the question is determined. An express provision of that kind seems to exclude an implied provision that the duty is thrown upon him of securing the determination of the question. On the other hand the Income-tax Officer is the person who first becomes aware of the question which has arisen, and it seems reasonable to hold, and it certainly simplifies the working of the section, but he should immediately communicate the fact of such question having arisen to his own Commissioner with whom he is in constant touch and who is then in a position to exercise the function imposed upon him, as the case may be, giving the assessee an opportunity of representing his views. *What is quite clear is that the Income-tax Officer cannot himself decide that question or act as though it had been determined in accordance with the provisions of this section and that if he proceeds to prejudge the issue and act as though it had been determined and assess the firm as though their principal place of business was in his own jurisdiction, in spite of the dispute being still undetermined, he is doing something not authorised by the Act, in other words, an illegality.* It is quite true that the following sub-section, namely sub-section (4), provides that notwithstanding anything contained in this section, every Income-tax Officer shall have all powers conferred by or under the Act on him in respect of any income, profits or gains accruing or arising or received within the area for which he is appointed."

PRINCIPAL PLACE OF BUSINESS.

The term "place of business" is a mixed question of law and fact. Primarily it is a question of fact as the Income-tax authorities are to determine where the books of accounts are adjusted, contracts are made and loans incurred. This practically means what is the controlling centre. Where the Income-tax authorities ignore to examine all the relevant facts, question of law arises and a reference to the High Court becomes permissible. It is known fact that big firms have branches elsewhere and the principal place of business is very often to be determined on the scrutiny of books. The origin of business is an important factor in determining the principal place of business. In the case of *Dinonath Hemraj*, 100 I. C. 756, it was held that the fact that the goods are manufactured in one place does not make that place the principal place of business; nor is the fact that the bulk of the practical business is conducted at a particular place is conclusive as to its being the principal place of business.

Ordinarily the principal place of business of a firm or com-

pany is the place at which the persons directing the company or firm do their business. The fact that goods are manufactured in one place does not make the place necessarily the principal place of business. Where business is carried on in many places or at different branches, it may be said that the business is carried on in each of those places, though neither of them may be the principal place of business : *In the matter of Dinomath Hemraj*, 49 All. 616.

Thus the Income-tax authorities shall have to enquire which is the head office or if there is any registered head office. Mere residence does not make a place the principal place of business. There may be cases where assessee wants to declare certain branch office as his principal place of business for the sake of convenience and better controlling and management ; in such cases the Income-tax authorities with due regard to the circumstances can grant the prayer ; the question of the parent business cannot be a bar to such a decision.

RESIDENCE.

The word "residence" means the place where the assessee resides, but mere residence alone cannot be a safe guide for determining the principal place of business. An assessee may be assessed in the area where he resides but that area may not be his principal place of business. So far as Government salaried officers are concerned in Bengal, they are assessed at Calcutta by the Income-tax Officer of Central Salaries Circle although majority of the assessee's reside outside his jurisdiction. Such an assessment is permissive only because an Income-tax Officer has got jurisdiction over a class of persons or a class of area as sanctioned by the Commissioner.

FINAL ASSESSMENT WITHOUT THE REPORT OF BRANCH INCOME.

Although the Income-tax Officer of the principal place of business is within his rights to call for accounts of an assessee of his branch business outside his jurisdiction, the Income-tax Officer within whose jurisdiction the branch business lies is competent to examine the branch account and to send the report of such examination to the Income-tax Officer of the principal place of business.

Failure to comply with the requisition of either of the two officers will result in a summary assessment under section 23(4); *In the matter of Lachmon Prosud Baburam*, 88 I.C. 216 : A.I.R. 1925 All. 385 and also in A. I. R. 1930 All. 49, it was held that failure to comply with the requisition makes the defaulting assessee liable to an assessment under section 23 clause (4).

But where branch accounts have not been requisitioned from the assessee by the Income-tax Officer of the principal place

of business, and where the branch report is also not forthcoming, any assessment made by the Income-tax Officer is clearly illegal and irregular.

65. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

CASE LAW.

Under the Income-tax Act, VII of 1918 in *In the matter of Raja of Ramnadi* it was held that an assessment of agricultural income or income not earned in or brought into British India would be beyond the scope of Income-tax Act and hence a suit to recover income-tax assessed thereon is not barred by section 52 of the Act. (A. I. R. 1929 Mad. 179).

66. (1) If, in the course of any assessment under this Act or any proceeding in connection therewith other than a proceeding under Chapter VIII, a question of law arises the Commissioner may, either on his own motion or on reference from any Income-tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court.

(2) **Within sixty days of the date on which he is served with notice of an order under section 31 or section 32 or of an order under section 33 enhancing an assessment or otherwise prejudicial to him or of a decision by a Board of Referees under section 33A*, the assessee in respect of whom the order or decision was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Commissioner to refer to the High Court any question of law arising out of such order or decision, and the Commissioner shall, within *sixty days* of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court :

*Amended by the Indian Income-tax (Second Amendment) Act, 1930 (XXII of 1930).

‡ Inserted by the Indian Income-tax (Amendment) Act, 1930 (XXI of 1930).

† Provided that a reference shall lie from an order under section 33 only on a question of law arising out of that order itself, and not on a question of law arising out of a previous order under section 31 or section 32, revised by the order under section 33 :

Provided further that if in exercise of his power of revision § under section 33, the Commissioner decides the question *† or if the Commissioner rejects the application on the ground that it is time barred or otherwise incompetent, or if, in exercise of his powers under subsection (3), the Commissioner refuses to state the case,* the assessee may *† within thirty days from the date on which he receives notice of the order passed by the Commissioner* withdraw his application, and if he does so, the fee paid shall be refunded.

(3) If on any application being made under subsection (2), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may apply *§ within six months from the date on which he is served with notice of the refusal,* to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to state the case and to refer it, and, on receipt of any such requisition, the Commissioner shall state and refer the case accordingly.

**(3) A If, on any application being made under subsection (2), the Commissioner rejects it on the ground that it is time-barred, the assessee may, within two months from the date on which he is served with notice of the order of the Commissioner, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may*

† Inserted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

§ Amended by the Indian Income-tax (Amendment) Act, 1925. (III of 1925.)

¶ Amended by the Indian Income-tax (Amendment) Act, 1924 (XI of 1924.)

*** Inserted by the Indian Income-tax: (Second Amendment) Act, 1933 (XVIII of 1933.)

require the Commissioner to treat the application as made within the time allowed under sub-section (2).

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Commissioner by whom it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Commissioner by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the registrar, and the Commissioner shall dispose of the case accordingly, or, if the case arose on a reference from any Income-tax authority subordinate to him, shall forward a copy of such judgment to such authority who shall dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court on the application of an assessee, the costs shall be in the discretion of the Court.

(7) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case :

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow.

**(7A) Section 5 of the Indian Limitation Act, 1908 shall apply to an application to the High Court by an assessee under sub-section (3) or sub-section (3A).*

†(8) For the purposes of this section "High Court" means—

(a) in relation to the North-West Frontier Province

and British Baluchistan, the High Court of Judicature at Lahore ;

(b) in relation to the province of Ajmer-Merwara, the High Court of Judicature at Allahabad ; and

(c) in relation to the province of Coorg, the High Court of Judicature at Madras.

Reference to High Court (Section 66)—Under the Act of 1918 a reference to the High Court on a question of law might be made only if the head of the income-tax department in a province saw fit. He was not required to make any such reference on the application of an assessee if satisfied that the application was frivolous or that a reference was unnecessary. Under section 66 of the Act, the Commissioner of Income-tax has no longer power to withhold a reference on these grounds but is required to state a case to the High Court on the application of an assessee. In order to provide against frivolous or unnecessary applications, sub-section (2) requires that every such application shall be accompanied by a fee of Rs. 100 or such lesser sum as may be prescribed by rule made by the Central Board of Revenue (no lesser sum has yet been prescribed). In order to safeguard the revenue, sub-section (7) provides that the fact that a case has been stated to the High Court shall in no way stop the collection of the tax from the assessee.

An application for a reference to the High Court can only be made after an appeal to the Assistant Commissioner under section 31 or an appeal under section 32 to the Commissioner or a reference to a Board of Referees under section 33-A has been disposed of. An assessee must therefore exhaust his remedies of appeal to the income-tax authorities before requiring a reference to the High Court. As it is desirable that questions of principle should so far as possible, be settled by the revenue authorities, the proviso to sub-section (2) provides that if on receipt of such an application the Commissioner is himself prepared to give a ruling in favour of the assessee on the point of law raised, the applicant may withdraw his application for a reference to the High Court in which event the fee paid shall be refunded.

An assessee may also ask for a reference to the High Court on a question of law arising out of an order of the Commissioner of Income-tax under section 33 of the Act. This right has been newly conferred on the assessee by the Indian Income-tax (Second Amendment) Act, 1933. A reference in respect of such an order can be asked for only where the order

enhances an assessment or otherwise prejudices the assessee and in no other case. Further a reference can be made *only on a point of law arising out of the order under section 33 itself* and not on a question of law arising out of a previous order under section 31 or section 32 revised by the order under section 33.

The circumstances under which the fee may be refunded to the assessee are specified in the second proviso to section 66(2). A refund may be made (1) when the question which the assessee desired should be referred to the High Court has been decided by the Commissioner in exercise of his powers under section 33 in favour of the assessee and the latter withdraws his application, and (2) when the Commissioner rejects the application on the ground that it is time barred or otherwise incompetent or when he refuses to state the case in exercise of his powers under sub-section (3) of section 66 and the assessee withdraws his application.

In all cases the assessee should withdraw his application within thirty days from the date on which he receives notice of the order passed by the Commissioner. The refund of fee except in the circumstances specified above is not warranted by the Act.

No reference may be made to the High Court on a question of fact. The Commissioner, under these provisions may, therefore, only withhold an application for a reference to the High Court if he considers that a point of law is not involved. If he does withhold it on that ground, the applicant under sub-section (3) may apply to the High Court within six months from date on which he is served with notice of the refusal to make a reference for a *mandamus* requiring the Commissioner to state a case, and if the High Court issues such a requisition, the Commissioner must state a case. The rights of an assessee in cases where the Commissioner refuses to state a case on the ground that the application under section 66(2) was time barred, are set forth in sub-sections (3A) and (7A) of section 66.

EXTENT OF APPLICATION OF THE SECTION.

Section 66(1) permits reference to the High Court in any case coming under the Income-tax Act except a proceeding under Chapter VIII which relates to offences and penalties. No reference can be made to the High Court if any question arising out of an order under section 52, passed by an Assistant Commissioner, whether the order is contained in the order in appeal or whether it is a separate proceeding—*In re : Naraindas Mohonlal of Banares*, A. I. R. 1923 All. 231. When during the pendency of prosecution proceeding

for offence u/ss 177 and 193 I. P. C., an assessee applies for withdrawing the appeal and for dropping the prosecution, the Asst. Commr. dismisses the appeal but does not drop the prosecution and refuses to hear on merits—on reference, the High Court has held that nothing arises from the order u/s 31 and the prosecution matter is wholly one collateral to it—*In re : Shyam Sundar Behari Lal*, 7 I. T. C. 293.

Under the section a reference is permissible either by the Commissioner on his own motion or by any Subordinate income-tax authority. It cannot be at the instance of an assessee.

Under the section a reference is permissible either by the Commissioner of his own motion or by any subordinate income-tax authority. It cannot be at the instance of an assessee. Sub-section (1) is not intended to benefit an assessee but is merely to enable the Commissioner where he feels any difficulty with regard to any question of law to refer the matter himself to the High Court: *In the matter of Subbiyah Iyer*, A. I. R. 1930 Mad. 449. Similar views have been expressed in the case of *Mahamad Farid Muhammad Shafi*, 105 I. C. 167, that sub-section (1) of section 66 contemplates a reference by the Commissioner on his own motion or at the instance of subordinate income-tax authorities but never at the instance of the assessee. The Commissioner of Income-tax, Bengal made a reference to the High Court in *In the matter of Trustees of late Sir David Yule* (I. T. L. R. 15) suo motu, at a time when appeal u/s 30 was pending.

The High Court has no power to question the decision of the Commissioner or of the Central Board of Revenue as to the principal place of business of a firm arrived at under section 64; but where there has been a total failure on the part of the Income-tax authorities to apply provisions of section 64 and where there has been an illegal assumption of authority by the Income-tax Officer, as has been laid down in the case of *Dinonath Hemraj*, 25 A. L. J. 225, the Commissioner of Income-tax and ultimately the High Court are competent to interfere.

UNDER SECTION 66(2).

Application by an assessee under section 66(2) is limited to orders under sections 31, 32, or of an order u/s 33 enhancing an assessment or otherwise prejudicial to him and 33A; the assessee can within 60 days from the date of receipt of notice of order under sections 31, 32 and 33A, may require the Commissioner to refer the question of law to the High Court with his opinion thereon.

In In the matter of Maham Lal Ramsarup, 83 I. C. 27.

A. I. R. 1925 All. 298, it was held that the assessee may ask the Commissioner to refer on a question of law, which must be specific. Justice Walsh remarks: "It must also be clearly understood that this court cannot listen to suggested points of law, which were not first taken in original proceedings before the Income-tax Officer and also submitted clearly and definitely to the commissioner by way of appeal".

Thus where points of law not raised at the first instance cannot be raised before the appellate authority or even under a petition under section 66(2); *In the matter of Thiruvenguda Mudaliar*, A. I. R. 1928 Mad. 889 : 110 I. C. 742. Similar views have been expressed in a very recent case by the Lahore High Court in *In the matter of Rai Bahadur Koramchand*, 131 I. C. 639 that points of law not raised before the original court cannot be raised before the appellate authority or before the High Court. The expression "any question of law" means questions previously raised before the Commissioner. In the case of *A. G. R. L. A. Chettiyar firm v. Commissioner of Income-tax, Delhi*, 132 I. C. 857, it was held that the questions regarding the validity of the notice and the propriety of the assessment did not arise in the appeal and there was no room for reference to the High Court in respect of such questions.

WHETHER A REFERENCE AGAINST ORDER UNDER SECTION 33 IS PERMISSIBLE.

The section as amended, implies that reference is permissible against an order under section 33 as section 66(2) clearly and specifically refers to sections 31, 32, 33 and 33A. A fiscal statute must be construed literally and nothing should be done by implication. But in the case of *Singseng Hin*, 89 I. C. 785, Chief Justice Robinson held that as section 66(3) only permits an assessee to move the High Court in case of an application under sub-section (2) of section 66 and as section 33 is not mentioned in section 66(2), the assessee had no right to require a reference or move the court for mandamus. "The right to require a reference or to move the High Court to compel a reference cannot exist without an express provision conferring the right." This decision of the Rangoon High Court was before the present amendment and the present amendment confers a right to the assessee to ask the commissioner to refer a case to the High Court u/s 33 to a limited extent.

The Calcutta High Court in the case of *Kumar Sonat Kumar Roy*, 30 C. W. N. 831 : 96 I. C. 702, held that "the Income-tax Act makes no provision by which the High Court can compel the Commissioner to state a case to the High Court when a question of law arises in a review proceeding before the Commissioner." The Act now provides that reference is

possible out of an order u/s 33 enhancing an assessment or otherwise prejudicial to him. Provided that a reference shall lie from an order u/s 33 only on a question of law arising out of that order itself, and not on a question of law arising out of a previous order u/s 31 or section 32, revised by the order u/s 33.

But in the matter of *Shaikh Abdul Kadir Murakayar & Co.*, A. I. R. 1926 Mad. 1051, it was held "it is clear that sub-sections (2) and (3) of section 66 are in terms limited to orders passed under sections 31 and 32 (and also under section 33A). As to orders in review passed by the Commissioner under section 33 as in the present case there is nothing to operate upon except section 6(1) and the assessee has no remedy unless we hold that the Court has power to order the Commissioner to state a case embodying any point of law that may arise in course of proceedings under section 33." Following the principle as laid down in the Privy Council case of *Alrock, Ashdown & Co.*, 45 M. L. J. 592, it was held that "it does not follow that the power of the High Court was meant to be confined to cases under those sections and was by implication taken away in the case of orders under section 33, a result which could not have been intended by the Legislature." Before the present amendment, section 66(2) did not contain any specific provision about reference out of an order under section 33 of the Act. The recent amendment has considerably thrown off the barrier. The Madras High Court even under the previous Act, in the case of *Abdul Kadir Murakayar* A. I. R. 1926 Mad. 1051, was of opinion that the power of the High Court was not taken away by implication in the case of orders u/s 33. The amendment provides a right to claim a reference to the High Court on a point of law arising out of an order passed by the commissioner in revision.

APPLICABILITY.

In *In the matter of P. K. N. P. R. Chetyar Firm*, A. I. R. 1930 Rang. 33, it was held that the failure of the Commissioner in his duty under section 33 will not give the High Court any jurisdiction to require the case to be referred under section 66(3), since that sub-section relates back to sub-section (2) and sub-section (2) specifically deals only with orders under sections, 31, 32 and 33A and not with orders under section 33. The Act now provides a reference to a limited extent out of an order under section 33.

But in *In the matter of Surajmal Brijlal*, A. I. R. 1930 Pat. 538, it was held : "What would be the position, it may be asked where the Commissioner of Income-tax in an appeal heard under section 32, set aside the assessment but subsequently calls for the records *suo motu* under section 33 and himself

makes an assessment or when the tax and penalty imposed by the Income-tax Officer having been set aside by the High Court in an appeal under section 31, the Commissioner purporting to act under section 33 calls for the record and makes the assessment himself and restores the tax and penalty which had been set aside by the High Court. There is no reason why the assessee in such cases should not be allowed to ask for a reference under clause (2) of section 66. Such an anomaly can be removed only by legislature amending section 66 so as to include orders passed by the Commissioner of Income-tax under section 33 or by making some other provision which would render the order of the Income-tax Commissioner, if they are arbitrary and unreasonable, liable to be questioned before a superior authority." To obviate the above difficulties, the recent amendment gives a right to claim reference to the High Court on a point of law arising out of an order passed by the Commissioner on revision.

NO REFERENCE FOR CASES DECIDED UNDER SECTION 33.

A Commissioner cannot be required to state a case which has been decided by him on review under section 33, *Ratan Chand Khim Chand Motishaw*, 28 Bom. L. R. 1096, 98 I. C. 299, A. I. R. 1928, Bom. 566, 2 I. T. C. 225; *Chetyar P. K. N. etc., Firm*, 1930 A. I. R. Rang. 33; *Chetyar V. E. A. Firm*, 1930 A. I. R. Rang. 37, 7 Rang. 581. As there has been a specific provision u/s 66(2) that a reference shall lie out of an order u/s 33, the above decisions are not of any practical use now.

WHETHER AN ASSESSEE WHO HAS BEEN ASSESSED UNDER SECTION 23(4) CAN APPLY TO THE HIGH COURT.

An assessee under section 66(3) can require the High Court to ask the Commissioner to state a case where the Commissioner has refused to state a case under section 66(2). In the case of *Benarsidas*, 96 I. C. 382, Justice Martineau observes that the High Court may be moved under section 66(3) only when the assessee is competent to apply to the Commissioner under section 66(2) but where the assessee is debarred from making such application to the Commissioner he is not entitled to move the court for requiring the Commissioner for stating a case.

In the case of *Dunichand*, A. I. R. 1928 Lah. 864 where an assessment was made under section 23(4), it was held that the Commissioner should have referred the question of law. In *In the matter of Kushiram Koromchand*, A. I. R. 1927 Lah. 288, it was held that the question whether the Income-tax Officer made an assessment under section 23(4) legally or not is a question of law and a reference to the High Court was allowed.

In the case of *P. K. N. P. R. Chettyar Firm*, 8 Rang. 203, it was held that a reference to the High Court is permissible notwithstanding the fact that an assessment has been made under section 23(4). Where a serious question of law arises and the Income-tax authorities fail to apply the plain provisions of law and make an illegal assumption of authorities, the High Court is entitled to interfere. [*Vide* also the case of *A. K. R. P. L. A. Chettyar Firm*, A. I. R. 1931 R. 97, which lays down that a reference is permissible in case of assessment under section 23(4)].

Thus it is quite clear and it may be suggested that the reference to the High Court is competent in cases of assessment under section 23(4). Take for instance where an assessment is made under section 23(4), an objection under section 27 is filed and subsequently an appeal against the order refusing to reopen the case under section 27 is preferred under section 31. Cannot an assessee apply to the Commissioner for a reference to the High Court? Certainly he can. Thus a summary assessment cannot be a bar to an application for reference when there is any real question of law involved therein. But when no steps have been taken by an assessee, assessed u/s 23(4), the Commissioner cannot be asked to state a case for reference to the High Court u/s 66(2).

Where an assessment is made u/s 23(4) for non-compliance and the Assistant Commissioner rejects the appeal, holding that no appeal lies, a reference to the High Court u/s 66(2) is incompetent as there is no order u/s 31—*In re : Suraj Bhan ugr Sen*, A. I. R. 1932 All. 642; 141 I. C. 536. Para 79 of the Income-tax Manual contains that when an appeal is filed challenging the legality of an assessment u/s 23(4), even if it is held that no appeal lies, still it must be held to be an order u/s 31 and consequently an application for reference u/s 66(2) lies.

But it is open to the High court by virtue of its inherent prerogative of powers to order the Commissioner of Income-tax to refer the question of unreasonableness of an assessment u/s 23(4), if satisfied that the I. T. O. has acted recklessly or fraudulently—*In re : A. W. Dalal*, 7 I. T. C. 301.

But in my opinion the decision of the Allahabad High Court in the case of *Jotram Sher Singh* A. I. R. 1934 All 559, gives the correct view of the law.

Section 30, proviso, expressly declares that there shall be no appeal from an assessment to the best of I. T. O's judgment u/s 23(4). Accordingly no question of law or fact arising from such assessment can be the subject of consideration by the Assistant Commissioner for the simple reason that no appeal lies to him, with the result that the Assistant Commissioner can never have an occasion to pass in appeal an order u/s 31 in relation

to a best judgment assessment. The Case of *Ananda v. Commissioner of Income-tax, Bihar and Orissa* A. I. R. 1931 Pat 306, where an order rejecting an appeal on the ground that it did not lie, was held to be an order u/s 31 "disposing of an appeal."

With great respect, it may be pointed out that a tribunal cannot "dispose of an appeal" if what purports to be an appeal is no appeal and is held by the tribunal to be incompetent. Where the A. C. rejects what purports to be an appeal on the ground that none lies, he gives effect to the proviso to section 30 and his order should be deemed to be one under it and not under section 31.

HIGH COURT WHETHER EXERCISES ORIGINAL OR APPELLATE JURISDICTION.

There are conflicting decisions as to whether the High Court hearing reference under section 66, exercises original or appellate jurisdiction. An application for reference is not by way of an appeal. "It is desirable to point out that section 66 under the new Act does not give a right of appeal. Persons assessed to income-tax should clearly understand that this court is not a court of appeal to which resort may be had if they happen to be dissatisfied with the decision against them": *In the matter of Makhan Lal Ramswarup*, 86 I. C. 27.

ORIGINAL OR APPELLATE JURISDICTION.

In *In the matter of Anantapur Gold Mines v. Chief Commissioner of Income-tax, Madras*, 64 I. C. 682, it was held that issuing of an order under section 45 of the Specific Relief Act in the nature of a mandamus is an exercise of original jurisdiction within section 106(2) of the Government of India Act. Chief Justice Walsh observes: "The High Court have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any Act ordered or done in the collection thereof in accordance with the usage and practice of the country of the law for the time being in force."

Now the issuing of the writ of mandamus to secure the performance of a public duty when no adequate remedy existed by action or otherwise was, it seems to me clearly an exercise of original jurisdiction. It was a proceeding originating in court issuing it, and might be directed in a proper case to any class of public officer, executive or judicial. It must also be regarded as having been within the original jurisdiction of the supreme court, because the court had no appellate jurisdiction. Similarly, I think that the substituted jurisdiction to issue order under section 45 of the Specific Relief Act, is original jurisdiction. It may in terms be directed to any person holding a public office, and to any corporation as well as to any inferior court of judicature. Nature of the jurisdiction exercised is the

same in each case and must, in my opinion, be considered an exercise of original jurisdiction. If this be so, I am unable, with great respect, to agree with the learned Judge that in making the order prayed for, we should not be exercising original jurisdiction in a matter concerning revenue."

But the Privy Council in the case of *Alcock Ashdown & Company v. Chief Revenue Authority*, 28 C. W. N. 762 held that the court exercises appellate jurisdiction. The High Court cannot exercise an original jurisdiction. In their Lordships' view, "the order of a High Court to a revenue officer to do his statutory duty would not be the exercise of original jurisdiction in any matter concerning revenue."

The Calcutta High Court in the case of *Birendra Kishore Manikya v. Secretary of State*, 48 Cal. 766 : 25 C. W. N. 80, held that the High Court exercised not an original but an appellate jurisdiction.

In *In the matter of Aurangabad Mills Ltd.*, 64 I. C. 9, it was held by Chief Justice Macleod that the High Court exercises original jurisdiction and as such cost should be assessed as on the original side.

But the Calcutta High Court in the case of *Provat Chandra Barua*, 29 C. W. N. 298 held that such a judgment is merely advisory and made by the court in exercise of its consultative jurisdiction. I am of opinion that the decision of the Calcutta High Court in the case of *Provat Chandra Barua*, 29 C. W. N. 298, lays down the correct procedure.

LAWS OF LIMITATION.

Under section 66(2) an assessee must apply within 60 days from the date of service of order and in the case of refusal by the Commissioner under section 66(3) the assessee must file an application for reference within 6 months from the date of such refusal. Section 66(3) is limited to a case on the ground of any question of law arising, and it cannot be construed as covering a refusal on some other ground—*In re : Khemchand Ramlas*, A. I. R. 1932 S. I.

COMMISSIONER HAS NO POWER TO EXTEND THE PERIOD OF LIMITATION.

The Commissioner cannot condone the period of limitation even if sufficient cause is shown and a reference made on an application which is time-barred cannot be entertained by the High Court. In *In the matter of Bonjilal*, 90 I. C. 1018 : 6 Lah. 373 it was held that the delay of one month robs the Commissioner of all jurisdiction and a reference by the Commissioner is of no avail.

In *In the matter of Ratan Chaml Khim Chand Motishaur*, 98

I. C. 299, it was held that the High Court is not competent to extend the period of limitation prescribed by section 66(2). The Patna High Court in the case of *Hukumchand Hordat Roy*, 2 I. T. C. 140, arrived at a similar decision. The refusal of the Commissioner to make a reference of a supplementary question of law submitted to him, one month after the Assistant Commissioner passed his orders, as being time barred, is justified—*In re : Raghunath Das Sewlal*, A. I. R. 1932 Cal. 411.

In the *Trustees Corporation Ltd.*, 34 C. W. N. 711 it was held: "The stringency of this requirement is clearly deliberate. It is the intention of the enactment that the High Court is not to be flooded with such applications. The object is a statutory one and in their Lordships' judgment the High Court will be well advised, before they entertain any question under this section, always to see that the preliminary statutory conditions have been fully observed."

But the time spent for taking copies must be allowed in computing the period of limitation: *In the matter of Romanath Reddiar*, A. I. R. 1928 Rang. 152: 1110 I. C. 601. The Commissioner is not competent to waive the statutory period prescribed for an application under sub-section (2) of section 66: *In the matter of Ramanath Reddiar*, 110 I. C. 601 and *Mohoulal Hardiodas*, A. I. R. 1930, Pat. 14.

It has been held in the case of *Ratanchand Khimchand Motishaw*, 98 I. C. 294, that the High Court is not competent to extend the period of limitation on any account whatsoever.

In *In the matter of Hardiodas*, 122 I. C. 810, it was held that the time spent for obtaining copies must be excluded in computing the period of limitation. But no ruling of the court is necessary in view of the insertion of section 67A which states that in computing the period of limitation, the time spent for obtaining copies of such orders shall be excluded.

PASSING OF THE ORDER.

There is nothing in the language of section 66(2) to hold that the expression "passing of the order" should be interpreted as the communication of the order to the party and it would be straining the law to hold that an order passed by an Income-tax Commissioner can be ignored for the purpose of limitation until it has been duly communicated to the assessee. Similarly on general principles and in view of section 29 of the Limitation Act, the period required for obtaining copies of the order under section 31 or 32 of the Act shall be excluded in computing the period of limitation for an application for reference by an assessee: A. I. R. 1928 Rang. 152, A. I. R. 1929 Lah. 170 and 34 All. 496 referred to; A. I. R.

1926, Bom. 556, A. I. R. 1927, Mad. 545 *not approved*: *In the matter of Mohonlal Hardiodas*. A. I. R. 1930, Pat. 14.

FEES.

An assessee shall have to deposit the fee of Rs. 100 in respect of an entire application and not in respect of each point raised: *In the matter of Chokalingam*, 2 Rang. 579: 84 I. C. 521. But in the case of *Mothary Ganga Raju*, 100 I. C. 291: 50 Mad. 335, it was held that it is not competent for four separately assessed persons to combine their application for a case to be stated in one document, when points to be raised are the same. Their case must be separately stated and they must pay separate fee of Rs. 100 each. Where more than one assessee puts in one joint petition with one fee of Rs. 100, the application is not proper even in the case of any one of them.

Chief Justice Robinson in the case of *Chokalingam*, 84 I. C. 521, remarks: "on the question of the fee, we are of opinion that it is to be paid in respect of the application and not in respect of each point raised therein. The section contemplates each application in a case and sub-section (5) shows that each case may raise several questions of law. Words in the singular should be read as including the plural, unless there is anything in the context to point to a different meaning."

COSTS.

Costs are allowed at the discretion of the court. The Court in awarding costs shall have to decide the amount to be awarded. Cases are not wanting where the High Court has allowed both parties to bear their costs. In the case of *Aurangabad Mills, Limited*, 45 Bom. 1286, it was held: "The costs of reference under section 51 of the Act of 1918, made at the instance of the chief revenue authority of Bombay within the local limits of the original jurisdiction, should be taxed as on the original side." All submissions in which costs are involved must be argued at the time of hearing and before a final order is drawn up: *In the matter of Ramyopal Mulchand*, 87 I. C. 97.

An order awarding assessee costs of reference means the award of all costs for making the reference and includes the amount of Rs. 100, deposited by the assessee (*Radhey Lal Balmikanda* A. I. R. 1933 All. 23, relied on)—*In re : Lachmandas Baburam* A. I. R. 1933 All. 853.

JURISDICTION OF HIGH COURT.

The High Court has jurisdiction under section 66 to require the Commissioner to state a case where any application or reference has been refused by the Commissioner under section 66(2). Where there is a question of law the High Court is

competent to interfere. In the case of *Gokulchand Jagonnath*, 76 I. C. 139, it was held that the Commissioner has no power under the law to refuse to pass any order or an application or to delegate his authority to any subordinate officer, that the procedure adopted by the learned Commissioner in this case was quite illegal and that he himself ought to have passed definite orders accepting or rejecting the application and the refusal by the Commissioner to state the case, whatever may be the grounds of his refusal, is tantamount to a refusal on the ground that there is no question of law involved and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, has power to require the Commissioner to state the case and to make a reference to the High Court. Justice Motisaghar remarks: "In the present case, however, the learned Commissioner has not passed any orders on the petitioner's application. Neither he accepted the application nor rejected it as required by clause (2) of the section. This procedure on his part is not warranted by any provision of law, and I am, therefore, of opinion, that the case must be referred back to the Commissioner with a direction that he should either draw up a statement of the case for reference to the High Court or reject petitioner's application on the ground that there is no question of law involved therein."

But where findings essential for a decision of a case do not appear in the statement of the case, the court is competent to ask the commissioner for proper finding again: *In the matter of Martin & Co.*, A. I. R. 1929 Cal. 753.

Thus it is quite clear that section 66(3) is confined only to cases of refusal by the Commissioner on the ground that no question of law is involved therein but not to refusal on any other ground: *In the matter of Madhav Das Jethabhai*, A. I. R. 1928 Bom. 434. The provisions of section 66(3) of the Act are not applicable to a case of refusal by the Commissioner to state a case on the ground that the application was made beyond the period of limitation.

So far as orders under section 33 are concerned, different High Courts have held different views. The Calcutta High Court in the case of *Kumar Sonat Kumar Roy*, 30 C. W. N. 831, has held that the High Court has no power under the section to order the Commissioner to state a case where a question of law arises before the Commissioner in a review proceeding under section 33. But (Semble) the High Court may possibly pass such an order under section 45 of the Specific Relief Act. Similar observations have been made by the Rangoon High Court in the case of *Sinsenghin*, 89 I. C. 785: A. I. R. 1925 Rang. 252 and also in the case of *Ratanchand Khimchand Motishaw*, 98 I. C. 299, by the Bombay High Court.

The recent amendment has removed all complications by providing reference out of an order u/s 33 to a limited extent.

In *In the matter of Abdul Kadir Marakhyar*, 51 M. L. J. 650, it was held that the High Court can compel the Commissioner to state a case where any question of law is involved. This was decided on the principle in the case of *Alcock Ashdown Co.*, 28 C. W. N. 762.

In the unreported case of *Leongmoh & Co.*, it was held that where an assessee did not apply to the Commissioner of Income-tax under section 66(2) asking him to state a case, the High Court is without jurisdiction.

Neither the Commissioner nor the High Court is competent to condone delay or to allow an application which is time-barred: *In the matter of Ratan Chand Khim Chand Motishwar*, 98 I. C. 299. In *In the matter of Bulchand Keshab Das*, A. I. R. 1930 Sindh 301, it was held that the application is not time-barred as the period of limitation is to be computed from the date of communication of the order. Jurisdiction to excuse delay is not contemplated—*In re : Lakshmi Sewak Sahu*, 6 I. T. C. 142.

The High Court has no power to decide a question which was not raised at the original court or before the Commissioner. In *In the matter of A. K. A. C. T. V. Chhettyar Firm*, 113 I. C. 810, it was held that under section 66 of the Income-tax Act, the Commissioner of Income-tax cannot be required to state a case upon points of law which were not raised before him and the High Court is *functus officio*. The High Court must confine itself within the points raised by the assessee before the court of first instance. In *In the matter of Makhan Lal Ramswarup*, 86 I. C. 27 Justice Walsh remarks: "It must also clearly be understood that this court cannot listen to suggested points of law, which were not first taken in the original proceedings before the Income-tax Officer, and also submitted clearly and definitely to the Commissioner by way of appeal."

Where the Assistant Commissioner has no occasion to deal with or apply his mind to a point of law, the point not having been raised before him, such point of law cannot be said to arise out of his order and the assessee cannot claim any reference in respect of that point—*Commissioner of Income-tax v. Sindh Light Railway*, 138, I. C. 673. High Court has to decide questions of law as distinguished from questions of substantial error in procedure—*In re : H. S. Gour*, 7 I. T. C. 317.

In the case of *Isvar Das Dharamchand*, 92, I. C. 249 Justice Broadway remarks: "It seems to me that the application under section 66(2) to the Commissioner should state

the question of law which the petitioner desires to be referred to the High Court and I am also inclined to the view that the application under section 66(3) should also specify the question or questions of law which the applicants consider ought to have been referred to the High Court by the Commissioner. In the present case, 3 points were taken before the Commissioner in the application under section 66(2). One question alone was raised in the application to this court under section 66(3) and it seems to me that had the Commissioner confined his reference to the point raised before this court objections could not be taken to this action." In the case of *Radha Kishan & Sons*, 3 I. T. C. 73 it has been held that where the Commissioner makes a reference in respect of two points and declines to refer other points, the High Court is not competent to entertain under section 66(3) any application filed beyond the prescribed time. The competency of the High Court to issue mandamus under section 66(3) should be questioned at the hearing of the application made under the said section and not after the order passed on the application: *In re: Firm Gakulchand*, A. I. R. 1927 Lah. 449. The Lahore High Court in *In the matter of Rai Bahadur Koramchand*, 131 I. C. 639, came to the conclusion that an applicant cannot raise any new question before the High Court, if not already raised before the court of the first instance.

The High Court is out of jurisdiction when there is no refusal to state a case by the Commissioner and an application is not tenable: *In the matter of Govinda Saran*, 3 Luc. 237. Under section 66(3) an assessee can maintain an application for mandamus only on points of law raised before the Commissioner and he cannot be permitted to shift his ground. Where therefore, the assessee substitutes new points of law in such an application, the application should stand dismissed: *In the matter of A. K. A. C. D. V. Chettyar Firm*, 6 Rang. 492: A. I. R. 1928 Rang. 28. When the computation of profit is reasonable, High Court will not interfere—*In re: Ashgarali and Mohamad Ali*, A. I. R. 1932 O 10.

CONTENTS OF REFERENCE.

In case of reference under section 66 it is the duty of the Commissioner to find all the relevant facts; he is not merely required to state the questions of law and give his opinion; he is required above all things to state the fact upon which the question of law must be decided: *In the matter of Ganga-sagar Ananda Mohon*, 111 I. C. 282: 55 Cal. 953.

It is sufficient for an assessee to suggest to the Commissioner the question of law. It is for the Commissioner to find the facts first and then to state the point of law which arises out of those facts and on which he desires opinion of

the High Court. He may then give his own opinion in the case: *In the matter of Bijraj Rangalal*, 106 I. C. 193.

It is quite proper for Income-tax Commissioner to state his opinion on question involved. It is his first duty to state clearly and fully the material fact admitted or proved in evidence before him: *In the matter of Raja Shiruprosad Singha*, 82 I. C. 653: A. I. R. 1924 Pat, 679. It is the duty of the Commissioner to settle the case u/s 66(2) in its final form and if no suggestion, addition or amendment is received by him within 14 days, but if a question does arise, it is clearly his duty to state whether he and the assessee are able or unable to agree (vide Rule 12)—*In re: Kangra Valley Estate Co. Ltd. Lahore* 146 I. C. 599.

QUESTIONS OF FACTS.

The High Court is bound by the findings of facts arrived at by the Income-tax authorities: *In the matter of Commercial Properties Limited*, A. I. R. 1928 Cal. 456. Thus the High Court has no jurisdiction to consider the findings of fact arrived at by the Income-tax authorities even where the grounds are unsound or where no grounds are stated at all. The Income-tax Act does not impose on the appellate authority to set out fully the reasons for decision and the High Court cannot interfere: *In the matter of M. Chettyar Firm*, A. I. R. 1930, Rang. 224: 127 I. C. 468. The Calcutta High Court has arrived at a similar conclusion provided the finding of the tax authorities has resulted in total failure to give effect to the provision of law. In the case of *Feroj Salu*, 125 I. C. 91: A. I. R. 1930 Lah. 197, it was held that question of law arises where it can be shown that discretion has been arbitrarily exercised. It is not open to the High Court to go into the facts of the case and to determine whether the Income-tax Officer was right in his findings of facts. Findings of facts arrived at by Income-tax authorities are not ordinarily open to review by the High Court unless there is evidence to support them—*In re: S. P. K. A. A. M. Chettyar Firm* A. I. R. 1932 R. 66.

High Court is precluded from looking at the findings of fact except in so far as it is necessary to see whether there was any evidence which could have supported those findings (vide *American Thread Co v. Joyce* 58 S. J. 308). Except in cases when an I. T. authority has proceeded in a wrong construction of the Act, an inference drawn by him from the evidence cannot be challenged solely on the ground that a different conclusion could reasonably be reached from the same facts by the Assistant Commissioner (vide *Farmer Company Cotton's Trustees* 31 T. L. R. 478)—*Hemraj Kanji* A. I. R. 1933 S 146.

QUESTION OF FACTS.

(1) The question whether an assessee produced all his books of accounts is a question of fact pure and simple: *In the matter of Joharmal Uttamchand*, 2 I. T. C. 301.

(2) Whether the assessee was prevented by a sufficient cause in complying with the requisition under section 23(2) and 22(4) is purely a question of fact: *In the matter of Shivya-protap Bhatadu*, 84 I. C. 131: A. I. R. 1924 Nad. 880).

(3) In *In the matter of Bhagat Halwai*, 3 I. T. C. it was held that where an Income-tax Officer forms an opinion from local inspection and determines the assessable income of the assessee in that way, after rejecting the evidence adduced, the question is one of fact.

(4) In *In the matter of Babu Sahib*, 2 I. T. C. 502 it was held that where an assessee gets a share of the profits of business by way of remuneration, the finding that he is not a partner is a question of fact.

(5) In *In the matter of Arunachalam Chatyar*, 2 I. T. C. 38 it was held that whether a trust is revocable or not is a question of fact. Whether a particular expenditure is current or capital is a question of fact: *In the matter of Rattan Singh*, 55 I. C. 478, and *vide* also the case of *Ramanath Reddiar*, 100 I. C. 601.

(6) In *In the matter of Doyaram Shovaram*, 2 I. T. C. 226, it was held that in the absence of clearly and properly kept accounts, the charging of a flat rate is not a question of law but is a question of fact.

(7) In *In the matter of Maharaja of Darbhanga*, A. I. R. 1220, Pat, 81, it was held that whether the assessee's accounts disclose true income or not, are questions of facts. (*Jamas cycle Co. v. Commr. of inland Revenue* 12 T. C. 103 followed).

(8) In *In the matter of Chanlochiwan*, A. I. R. 1929, Rang. 102, it was held that whether a statement is incomplete or not is purely a question of fact.

(9) In But in the case of *P. K. N. Chettyar Firm*, A. I. R. 1930, Rang. 33, it was held that whether sufficient cause has been shown under section 27 is not a question of fact but is a question of law.

(10) In *In the matter of C. A. M. K. Kassi Chettyar*, 2 I. C. C. 98, it was held that the exercise of the discretion by the Assistant Commissioner in refusing to condone delay in presenting an appeal under section 30 is a question of fact; *vide* also the case of *Hukumchand Hardwat Roy*, I. T. C. 140.

(11) The question whether assessee is a member of the

joint family or not is a question of fact : *In the matter of Makhomlal Ramswarup*, 86 I. C.

(12) It is the duty of the Commissioner to state facts and then to formulate questions of law—*In re : Bai Sakina Boo* A. I. R. 1932 B116.

(13) Remittance from foreign country, whether out of capital or profits is a question of fact (*Scottish Provident Institution v. Allan* (1903) A. C. 129 followed)—*T. P. R. P. L. Family v. Commr. of Income-tax* A. I. R. 1933 R. 218.

(14) Whether accounts are regular or not are questions of fact—*Wall v. Cooper*, 14 T. C. 552.

(15) Whether an income is casual and of non-recurring nature or whether it is an addition to remuneration is a question of fact—*In re : Lakshman Chettier*, A. I. R. 1930 Mad. 21.

(16) Whether an assessee occupies a building solely or with another is a question of fact (*Hawken v. Compton*) 8 T. C. 306.

(17) Whether accounts kept are on mercantile or cash basis is a question of fact—*In re : Feroze Saha*, A. I. R. 1930, Lah. 187.

HIGH COURT IS COMPETENT TO REQUIRE THE COMMISSIONER TO STATE FACTS AND THEN LAWS.

While it is quite proper for the Income-tax Commissioner in making a reference to place his opinion on the question involved, it is his first duty to state clearly and fully the material fact admitted or proved in evidence before him : *In the matter of Sri Shiboprosad Singha*, A. I. R. 1924, Pat. 679 : 82 I. C. 653.

The question whether a point of law arises on any given finding or whether in reality the alleged point of law is merely the conclusion of facts, depends to a great extent on the particular circumstances of each case. The question whether expenditure in a shipowner's business is current as opposed to capital must essentially be one of degree and, therefore, the effect of decision on question of fact must always be considered by an appellate court from the point of view whether although the decision is undoubtedly one of fact, there is sufficient evidence to come to a proper conclusion. If a decision of fact is founded on insufficient evidence, a question of law is produced which may be considered by any court of appeal. But if the lack of evidence and insufficient materials is due to the neglect of the assessee, its insufficiency cannot be used to throw over the question of fact a cloak of law : *In the matter of Ramanath Reddier*, 110 I. C. 601 : A. I. R. 1928 Rang. 15. In cases under section 66(3) it is the duty of the Commissioner to find all the relevant facts. The Commissioner must, above all things, state

the facts, upon which the question is to be decided : *In the matter of Gangasagar Annadamohon Saha*, 55 Cal. 953 : 1111. C. 828.

In *In the matter of Krishna Kumar and Mahendro Kumar Ghosh*, 35 C. W. N. 312, it has been held that the order passed by the Commissioner on the application filed before him under section 66(2), giving his reasons as to why he decided to refer a case or why he will not refer some of the questions and not the other is one thing, the case stated is another. In strictness and for the sake of convenience, the two should not be comprised in one document.

In the case stated should be included only the point, the Commissioner intends to refer, and the relevant fact on the point. Question not meant for reference should not find a place there.

In a reference under section 66(2) it is not the business of the High Court to decide abstract propositions of income-tax law, the question propounded should be formulated in a proper way, as concrete case arising out of the particular fact.

"This case must go back to the Commissioner and I must beg him, first of all, to make up his mind what question or questions he is going to refer to this court. If he is not going to refer any questions then he should leave out all mention of it in the case. When he knows what he has to refer and he states the facts relevant to those points, it will be possible for this court to deal with the matter. I would add if the Commissioner thinks that there is a point of law proper to be referred, he is not bound to refuse merely by reason that the assessee has not framed it properly. He can frame it properly himself and then refer. The case must go back to the Income-tax Commissioner to state a proper case." The High Court has power under section 66(5) to amend the questions asked by the Commissioner by raising the real question and then answering that question. *In re : Sibaprasad Gupta*, A. I. R. 1229, All. 819, *In re : Kajarimal Kalyandas*, A. I. R. 1930, All. 209, *fol.*—*In the matter of National Mutual Life Association of Australasia*, A. I. R. 1931, Bom. 448.

In *In the matter of Gakulchand Jagannath*, 76 I. C. 139, it was held that the Commissioner had no power under the law to refuse to pass any orders on an application or to delegate his authority to any subordinate officer, but that the Commissioner ought himself to have passed definite orders accepting or rejecting the application. It was held also, that the refusal by the Commissioner to state the case, whatever might be the grounds for the refusal, was tantamount to a refusal on the ground that there was no question of law involved and that the

High Court, if not satisfied with the correctness of the Commissioner's decision, has the power to require the Commissioner to state the case and to make a reference to the High Court.

QUESTION OF LAW.

Wherever any real question of law is involved, the High Court is competent to require the Commissioner to state a case.

(1) It has been held in the case of *Pandurang Ramchandra*, 91 I. C. 980, that the question as to what constitutes receipt is a question of law. It has been held by their Lordships of the Privy Council that "the proper legal effect of a proved fact is a question of law": *In re : Nafarchandra Pal v. Sukur*, 48 Cal. 189. In *In the matter of Ramgopal*, 20 Cal. 93, Sir Richard Couch remarks: "The fact found need not be disputed. It is the soundness of the conclusions from them that is in question and this a matter of law."

(2) The proper legal effect of proved fact is a question of law: *Pandurang Ramchandra Panda*, 91 I. C. 980: *Jambhudas*, 104 I. C. 336.

(3) The legal effect of a disruption of a Hindu undivided family is a question of law: *In the matter of Nathumal*, 9 Lah. 201. Whether an assessee is to be treated as a joint family, *i.e.*, as a Hindu undivided family or as an unregistered firm is a question of law: *In the matter of Gangasagar Ananda Mohan Saha*, 55 Cal. 953: A. I. R. 1928, Cal. 836.

(4) It has been held in the case of *Satchitananda Singha*, 84 I. C. 792, that income derived by an assessee as a member of a joint family, whether can be assessed jointly with his personal income is a question of law.

(5) Whether a return filed by an assessee showing blank in the prescribed form is to be treated as no return is a question of law: *In the matter of Ratanchand Dunichand*, 9 Lah. 188.

(6) In *In the matter of Pannalal*, 29 P. L. R. 204, it was held that where accounts of several years are mixed up and an assessment is made at a flat rate, question of law arises.

(7) The question whether pending an application under section 66(2) is a bar to proceeding under section 33 is a question of law: *In the matter of Chettyr Firm*, A. I. R. 1925 Rang. 245.

(8) Where an assessee disputes the authority of the Income-tax Officer to adopt a flat rate, question of law arises: *In the matter of Joyram Motiram*, A. I. R. 1929 Nag. 243.

(9) Correction of a supposed mistake without issuing a

notice to the assessee under section 35 raises a question of law: *In the matter of Delhi Cloth and General Mills Ltd.*, A. I. R. 1929 Lah. 326.

(10) Where the Income-tax authorities improperly exercise their discretion, the question whether the discretion has been judicially exercised by them or not is a question of law: *In the matter of P. K. N. P. R. Chetyar Firm*, 8 Rang. 203.

(11) Whether reasonable opportunity was given to the assessee under section 33 is a question of law: *In the matter of Satchitananda Singha*, A. I. R. 1925 Pat. 155.

(12) Where the Income-tax authorities failed to apply the plain provisions of law and where there has been an illegal assumption of authority under section 64, question of law arises: *In the matter of Dinonath Hemraj*, 49 All. 616.

(13) The question whether the authorities made an assessment legally or not under section 23(4), is a question of law; *In the matter of Kusiram Koromchand*, A. I. R. 1927, Lah. 288, 14.

(14) In *In the matter of Bishnupria Chaudhurani*, 50 Cal. 907: A. I. R. 1924 Cal. 337, it has been held that "if an assessee states that he has no income from a certain source and the officer of the department disbelieved him" a question of law arises.

(15) Whether total destruction of a car or machine comes within the expression "obsolete" raises an important question of general interest and the Commissioner was asked to state a case: *In the matter of Ratan Singh*, 85 I. C. 478.

(16) In *In the matter of Bhola Saha Narasingh Das*, 116 I. C. 454, it was held that where a partner as partner invests money beyond his initial capital to the firm at an agreed rate of interest and the money is used for capital expenditure, the question whether the interest paid should form a deductible expenditure is a question of law.

(17) In *In the matter of Jambudas Devidas* (unreported), where on the evidence only one legal inference is alone possible and that has not been drawn, a question of law arises.

But in respect of an order passed by the Commissioner under section 33 of the Income-tax Act, the Rangoon High Court has no jurisdiction either under section 66 or under section 45 of the Specific Relief Act to direct the Commissioner to state a case: *In the matter of T. E. A. Chalvygar Firm*, A. I. R. 1930 Rang. 37.

MANDAMUS AND SPECIFIC RELIEF ACT.

Where the court has no jurisdiction under the Act, section 45 of the Specific Relief Act gives jurisdiction. In the case of

Alcock Ashdown & Co., 47 Bom. 742 (Privy Council), the opinion of Lord Phillimore is worth quoting: "to argue that if the Legislature says that a public officer, even a revenue officer, shall do a thing and he without cause or jurisdiction refuses to do that thing yet the Specific Relief Act would not be applicable and there would be no power in the court to compel him to give relief to the subject, is to state a proposition to which their Lordships must refuse assent. Section 45 of the Specific Relief Act enables any of the three High Courts to make an order requiring any specific act to be done or for both.....by any person holding a public office, whether of a permanent or temporary nature or by any court of judicature provided that such doing or forbearing is under any law for the time being in force, clearly incumbent on such person or court in his or its public character or on such corporation in its corporate character and subject to other conditions not material to this case".

In the case of *Muhamad Farid Mahamad Safi*, 9 Lah. 317, it was held that powers under section 45 (1) of the Specific Relief Act can be exercised only by the Calcutta, Madras and Bombay High Courts and that the Lahore High Court cannot issue any mandamus.

In *In the matter of Doriaswamy Ayer & Co.*, 45 Bom. 1064, the High Court was moved under section 45 (1) of the Specific Relief Act and in the case of *Haji Abdulla Shahi & Co.*, 70 I. C. 30, the Board of Revenue referred to the High Court when an application was made under the Specific Relief Act.

What is sufficient cause within the meaning of section 27 is purely a question of fact to be determined by the Income-tax Officer while making an adjudication. However harsh, baseless and injudicious the decision may be, section 45 (1) is inapplicable. In the case of *Shivapratap Bhattadu*, 84 I. C. 131, it was held: "If I were sitting as a court of appeal or revision, I would have no hesitation in characterising the proceeding as extremely harsh and the assumption baseless and in remanding the case for disposal on the merits. But the question is whether acting under section 45 of the Specific Relief Act, I can find that any case has to be stated. What sufficient cause is, is a question to be determined by the officer who has to deal with the application for setting aside the *ex parte* assessment and disposing the matter on an inspection on the account books. Where on the facts, about which there was no dispute, that officer thinks that sufficient cause has not been shewn, it is difficult to see how the issue of an order directing him to refer the question as to what the meaning of sufficient 'cause' is, would help the petitioner..... This is a matter, I think, where there has been an injustice to

the petitioner which I am sorry I cannot remedy by proceeding under section 45 of the Specific Relief Act."

In the case of *Anantapur Gold Mines Ltd.*, 44 Mad. 718 : 64 I. C. 682, it was held that section 106 (2) of the Government of India Act and section 52 of the Income-tax Act prohibited the High Court from entertaining any application under section 45 in the nature of a mandamus for the purpose of compelling the Revenue Board to refer the matter to the High Court under section 51 of the Income-tax Act : *Spooner v. Juddow*, 4 M. I. A. 353 followed. The assessee has no right to apply to the Court for an order in the nature of a mandamus under Specific Relief Act, requiring the Commissioner to state a case and refer a question of law because a "Specific and adequate legal remedy" in that behalf is available to the assessee under secs. 66 (2) and 66 (3) (*Sein seng Hen v. Commr. of I. tax*, A. I. R. 1925 R. 252 referred to, *In re : Shiba prosad Gupta*, A. I. R. 1929 All. 819, *In re Kajorimal Kalyanmal* A. I. R. 1930 All. 209 dissented from).....*Commissioner of I. Tax, Burma v. C. P. L. E. Chettyar Concern*, A. I. R. 1934 R. 132.

The above case was overruled by the decision of the Privy Council in the case of *Alcock Ashdown & Co., Ltd.*, 47 Bom. 742. Similarly in the case of *Abdul Kadir Marakayar & Co.*, 49 Mad. 725, it was held that the High Court is competent to issue a writ of mandamus directing the Commissioner to make a reference where any question of law is involved, although the Rangoon High Court in the case of *V. E. A. Chhatear Firm*, 7 Rang. 581, held that the High Court cannot exercise its discretion under section 45 of the Specific Relief Act in an order under section 33. The decision was to the effect that the court exercising discretionary power is not justified in disregarding those conditions and holding by a reference to a General Act that the court has power beyond those as provided in the Special Act, that it will be an exercise of power which is not vested by law. To me it seems that in the absence of any express provision in the Income-tax Act, the right of any party to move the High Court under section 45 of the Specific Relief Act can be taken away by implication. The principle of all fiscal legislation is that no strained construction ought to be put to make liable to taxation that which would not otherwise be liable but a fair and reasonable construction ought to be put. There is no express obligation upon the commr. to state a case on an order arising u/s 33, nor has the High Court power to order him to do so u/s 45 of the Specific Relief Act—*Tata Hydro Electric Agency Ltd. v. Commissioner of Income-tax, Bombay*, A. I. R. 1934, B. 62. The recent amendment provides reference out of an order u/s 33.

REVIEW OF JUDGMENT.

No application can be entertained under section 66 for a review of judgment of the order passed by the High Court. The said judgment is neither a decree nor an order under section 144 of the Civil Procedure Code: *In the matter of Kajorimal Kalayanmal*, A. I. R. 1930 All. 211; *vide* also the case of *Satchitananda Singha*, 84 I. C. 792.

LETTERS PATENT APPEAL.

In *In the matter of Provat Chandra Barua*, 29 C. W. N. 398, the Calcutta High Court held that the judgment given on a reference under section 66(2) is not a judgment within the purview of section 15 of the Letters Patent and as such is not appealable under the provisions of law. Such a judgment is merely advisory and made by the court in exercise of its consultative jurisdiction.

Similarly in the case of *Bulaqui Sahi*, 86 I. C. 870 : 6 Lah. 30, it was held that the decision of a single Judge on a point of law under section 66 is not a judgment within the purview of clause (10) of the Letters Patent and is not appealable.

But an order of a single Judge dismissing an application to compel a reference on the ground that there is no question of law is a judgment appealable under the Letters Patent: *In the matter of Taharmal Uttamchand*, 2 I. T. C. 301. "As noted by their Lordships in their decision, the matter is not free from difficulty. In *Tata Iron Steel Co. Ltd. v. Chief Revenue Authority of Bombay* 23 Bom. L. R. 1102, it was held that the decision, judgment or order made by the court under section 51 of the Act of 1918 was merely advisory and the respondent contended that if the final order of the court is merely advisory, a preliminary order refusing to call upon the Commissioner to state the case must be of the same nature. The cases, however are distinguishable, for the Income-tax Act of 1922 differs from that of 1918 in this respect that under the latter statute the Commissioner of Income-tax was given the power to state the case and refer to this court at his discretion whereas in the Act now in force he can be directed by this court to state the case even after he has refused to do so at the instance of the assessee. There can be no doubt that the order of the learned Judge in Chambers is a final judgment so far as the proceedings in the court are concerned and that an order issued by this court to the Commissioner under section 66(3) of the present Act is not merely advisory but is mandatory and must be obeyed by that official."

DECISION OF THE HIGH COURT.

Where a decision is arrived at by the High Court, the Commissioner is to take steps accordingly in that case; but other

assessee cannot claim the same benefit by virtue of a particular ruling in a particular case, of course the Commissioner can decide those cases out of his own accord under section 33 in the light of decision arrived at by the High Court.

CHIEF COURT AND THE COURT OF JUDICIAL COMMISSIONER.

The Judicial Commissioners or the Chief Court of Oudh are High Courts within the meaning of section 3(24) of the General Clauses Act. The High Court in section 66 of the Income-tax Act with reference to assessment of an assessee resident in North-west Frontier Province is the Court of the Judicial Commissioner of the North-west Frontier Province and not the Lahore High Court which has no jurisdiction to entertain a reference with such assessment: *In re: Toragulbai*, 8 L. 335.

But in *In the matter of Lucknow Ice Association*, A.I.R. 1926 Oudh 191, it was held that by virtue of sections 3 and 8 of the Oudh Court's Act, 1925, read with section 4(21) of the General Clauses Act, the Chief Court of Oudh is a High Court within the meaning of section 66 of the Act with jurisdiction to hear references. *In the matter of Khemchand Ramdas* A. I. R. 1932 S. 1., it has been suggested that the assessee in Sindh shall be placed in the same position as an assessee amenable to the jurisdiction of a High Court referred to in section 45 of the Specific Relief Act, so as to secure him the undoubted right to have questions of law arising out of appellate officer's orders, decided by a court of law, when the Commissioner refuses to state a case on fanciful and unfounded grounds.

HAS THE HIGH COURT POWER TO EXAMINE BOOKS OF ACCOUNTS AND COME TO FINDINGS OF FACTS CONTRARY TO THOSE ARRIVED AT BY THE COMMISSIONER.

In *In the matter of Binraj Hukumchand*, 35 C. W. N. 589, it was held that where a person is assessed in the ordinary way under section 23(3) of the Income-tax Act, the authorities, it is true, cannot assess him upon any figure of profits not warranted by the evidence before them. But where the transactions show a profit of a certain amount in the year concerned, if the assessee wants to deduct therefrom a certain sum as bad debt, the burden is upon him to prove the debt and prove the claim to set it off.

"The assessee has in this case asked us to receive in evidence certain copies of accounts said to appear in books of account which were not produced to Income-tax authorities at any stage. They ask us on the basis of these extracts to revise the Commissioner's decision upon the fact and to say that we are satisfied that the claim is made out. This shows an utter misconception of the procedure applicable to a reference under section 66 of the Act. *It is not open to any assessee to ask this*

court upon such a reference to examine his books of account and come to findings of fact contrary to those arrived at by the Commissioner in the case stated. Still less it is intended that this court should be a last resort for the production of books which were not produced before any one of the three Income-tax authorities which are to deal with the case."

IMPOSITION OF PENALTY UNDER SECTION 28.

Where the Commissioner sets aside a penalty imposed under section 28 by the Income-tax Officer and after having given an opportunity, to show cause, himself imposes a penalty, it is not open to the High Court to call upon the Commissioner to state a case for reference to the High Court: A. I. R. 1924 Pat. 644 distinguished and A. I. R. 1925 Pat. 352 doubted: In the matter of Jangi Bhagat Ramabatur, 121 I. C. 332: A. I. R. 1930 Pat. 127.

"The plain language of section 66 does not empower this court to require the Commissioner to state a case in respect of an original order passed by him and not in respect of an order passed in a matter which came before him on an appellate order by the Assistant Commissioner."

RIGHT TO BEGIN.

Counsel for the assessee applicant has the right to begin and has necessarily the right of appeal. In the case of *Killing Valley Tea Co.*, 48 Cal. 161, it was held: "When the reference was taken up for consideration, a question of procedure was raised as to who should begin. We ruled that the Counsel for the company was entitled to begin. The ruling is in accordance with the decision in *Marquis of Chandos v. Inland Revenue Commissioner*, 20 L. R. Ex. 269. The view that the objector who questions the assessment should begin and should have the right of reply is well founded on principle and is supported by the decision of the House of Lords in *Drake v. Attorney General*, 52 R. R. 122."

In *Romanath Chettiar*, 53 I. C. 976, it was held: "We think that on this reference made under section 51 of the Indian Income-tax Act of 1918, the assessee on whose application the reference was made by the Board of Revenue is entitled to be heard first."

JUDGMENT BY HIGH COURT.

Even if a judgment delivered by the High Court on a reference under the Income-tax Act, expounds a wrong construction of the Act against the Revenue authorities, if no appeal is preferred, the same must govern the relation of parties in the particular case—*The Commissioner of Income-tax, U. P. v. Tehri Garhwal State, through Ramprasad, Principal Officer*, 38 C. W. N. 314 (P. C.); A. I. R. 1934 P. C. 34.

SCOPE AND EXTENT OF THE RECENT AMENDMENT.

- (i) The assessee has been given the right to claim a reference to the High Court u/s 66(2) on any question of law arising out of an order u/s 33, enhancing the assessment or otherwise prejudicial to him. But a proviso has been added that a reference is competent u/s 33 only on a question of law arising out of that order.
- (ii) To obviate hardship, the Legislature has provided the assessee with a right to withdraw an application under section 66(2) and to claim refund of the fee paid, where the Commissioner holds the petition time-barred or otherwise incompetent or if in exercise of his powers u/s 66(3) the Commissioner refuses to state a case. A period of 30 days has been fixed for withdrawal of applications.
- (iii) The assessee has been given a right to apply to the High Court where an application u/s 66(2) is rejected by the Commissioner on the ground of limitation. An application to the High Court can be made in such a case within two months and not within 6 months. If the High Court is not satisfied with the Commissioner's order, it may require the Commissioner to treat the application as made within the prescribed time (section 66, 3A).
- (iv) The provision contained in section 5 of the Limitation Act, relating to extension of time for sufficient cause, has been extended to applications to the High Court u/s 66(3) and S 66(3A)—vide section 66(7A).

LIMITATION ACT.

Section 5:—Any appeal or application for review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force, may be admitted after the period of limitation prescribed therefor, when the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation, may be sufficient cause within the meaning of that section.

REFERENCE INCOMPETENT.

[Under Section 66 2].

Where the question does not arise in appeal, a reference is incompetent on that point: *In re : A. K. R. P. L. A. Chettiyyar Firm v. Commissioner of Income-tax, Burma*, 132 I. C. 718.

DIFFERENCE BETWEEN JUDGES.

[Under Section 66(3)].

In case of difference between two judges who referred the matter to the Chief Justice and who ordered for a Full Bench reference, the contention that as they had differed they are *functus officio* and as there was no majority, one way or the other, the opinion of the Commissioner should prevail, is totally erroneous: *In re : Dr. Umar Baksh v. Commissioner of Income-tax, Punjab*, 131 I. C. 690.

UNDER SECTION 66(3).

Whether in a case where the subject matter involved is Rs. 10,000 or more in value, does the refusal to issue a mandamus give the applicant an appeal to the Judicial Committee as of right ?

In *In the matter of Feroze Saha v. Commissioner of Income-tax, Punjab*, 132 I. C. 704, Justice Broadway observes: "It was, however, clearly held that an order refusing a mandamus was a judgment and in this view I concur. That the judgment refusing a mandamus was final, is also to my mind perfectly clear. The only question for decision on an application under section 66(3), Income-tax Act, whether a mandamus should or should not issue, is, therefore, a final one so far as this court is concerned. The refusal must, therefore, in my opinion, be regarded as a final judgment. As pointed out in my order of reference the refusal of the application was made in the exercise of this court's original jurisdiction, I would merely refer to page 732 of 47 Bom.—*Tata Iron Steel Co. Ltd. v. Chief Revenue Authority, Bombay* (2 I. T. C. 301). . . .

"I would, therefore, hold that an order refusing to issue a mandamus must be passed by this court on its original side and amount to a final judgment and that, therefore, the question of refund should be answered in the affirmative."

DECEASED ASSESSEE.

Strictly speaking heirs of a deceased assessee are not assesseees, but the Patna High Court in the case of *M. Muraja of Darbhanga*, A. I. R. 1930 Pat. 81, has allowed heirs to be substituted and heard in a petition of reference. Even in appeal cases heirs are allowed to participate. When the High

Court has been set in motion, there is no bar to have the reference answered. Section 24 B now provides that heir, administrator etc. can now step into the place of the deceased assessee under certain circumstances. It is said that a reference does not abate after assessee's death. It may be continued by his legal representative (*Hemming v. Williams* (1871) L. R. 6 C. P. 480, *Smith v. William* (1922) 1 K. B. 158, *In re : Maharaja of Darbhanga* A. I. R. 1930 Pat. 90). The Legislature has said very definitely that once a reference has been made under para (1) or an application has been made either under para (2) or (3), the proceedings have commenced, they must go forward until a final decision is reached by the High Court, provided that there is a question of law arising out of the assessment. There shall be an adjudication.

66A. (1) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two judges of the High Court, and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908, shall, so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force.

Reference to be heard by Benches of High Courts, and appeal to lie in certain cases to Privy Council.

(2) An appeal shall lie to His Majesty in Council from any judgment of the High Court delivered on a reference made under section 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council.

(3) The provisions of the Code of Civil Procedure, 1908, relating to appeals to His Majesty in Council shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court :

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (5) or sub-section (7) of section 66 :

Provided, further, that the High Court may, on petition made for the execution of the order of His Majesty in Council in respect of any costs awarded

thereby, transmit the order for execution to any Court subordinate to the High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of His Majesty in Council in the manner provided in sub-sections (5) and (7) of section 66 in the case of judgment of the High Court.

(5) Nothing in this section shall be deemed—

(a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.

NOTES.

By the Income-tax Amendment Act of 1926, section 66A empowers the party a right of appeal to the Privy Council. Before the addition of this section, there was no appeal to the Privy Council: *Tata Iron & Steel Co.* 47 Bom. 724; 25 Bom. L. R. 208; 39 C. L. J. 16; 28 C. W. N. 307; 74 I. C. 469.

HEARING OF THE REFERENCE.

References are to be heard by a Bench composed of at least two Judges of the High Court and the decision of the majority Judges shall be binding. But there are reported cases where it can be seen that references were often heard by a single Judge of the High Court. In the case of *Probhut Chandra Barua*, 52 Cal. 546, it was held that an appeal is incompetent against the decision of a single Judge. "A question has been raised," observes Mr. Justice Chatterjee, "by the learned Counsel for the appellant that the decision of Mr. Justice Rankin, who was the senior Judge, was held to have prevailed, was without jurisdiction. But that is a matter upon which both the learned Judges were agreed and this Bench constituted to hear the appeal under section 15(3) of the Letters Patent

is not competent to consider the question as to whether the decision of the Division Bench is or is not right."

In the case of *Bulaki Saha*, 88 I. C. 570, it was held on the authority of *Tata Iron and Steel Work Ltd.*, 47 Bom. 724, Privy Council, that the decision of a single Bench is not a judgment within the meaning of section 10 of Letters Patent and as such is not appealable.

But under section 66A all references are to be heard by a Bench of two Judges at least and in case of divided opinion, the matter is to be referred to a third Judge and an appeal against that is permissible.

APPEAL TO PRIVY COUNCIL.

High Court cannot grant leave to appeal to his Majesty in Council from an order of the High Court under section 66(3) refusing to require the Commissioner to state a case: *In the matter of Chettyar Firm*, A. I. R. 1930 Rang. 274; 40 Cal. 21. Privy Council *relied on*; A. I. R. 1927 Privy Council 242, 21. I. T. C. 30; A. I. R. 1921 Bom. 378 and A. I. R. 1923 Privy Council 138 *referred to*.

Section 66A confers a right of appeal to his Majesty in Council from a judgment of a High Court delivered on a reference made under section 66A of the Act. But the appeal thereby given is, by the express terms of sub-section (2) of section 66A, confined to a case which the High Court certifies "to be a fit one for appeal to his Majesty in Council." These words are textually the same as the concluding one of sub-section (C) of section 109 of the Civil Procedure and coupled with the carefully limited referential words to the Code of Civil Procedure in sub-section (3) of section 66A, suffice in their Lordships' judgment to exclude from any right of appeal cases which fall within the requirements of section 110 of the Code and are operative to confine that relief to cases which are certified to be otherwise fit for appeal to his Majesty in Council.

The Judicial Committee has held that section 66A added by the Income-tax Amendment Act 24 of 1926 which came into force on the first of April, 1926, conferred for the first time a right of appeal to his Majesty in Council and had no retrospective operation and accordingly there was no appeal at all from an order of the High Court made before and, therefore, final at the date when the section came into force: *In the matter of Delhi Cloth and General Silk Limited*, 47 C. L. J. 1, Privy Council, *Colonial Sugar Refining Co. v. Irving*, 1905 A. C. 369 *followed*. Vide also the case of *Commissioner of Income-tax, Bengal v. Shaw Wallace & Co.*, for permission to prefer an appeal in the Privy Council, 36 C. W. N. 138.

An order u/s 66(3) refusing to issue a mandamus to the Commissioner requiring him to state a case, passed by the Assistant Commissioner is a Judgment within the meaning of clause 19 of Letters Patent and is appealable to the Privy Council, if the value of the subject matter involved exceeds Rs. 10,000/- (*Toramal Uttam Chand*) 2 I. T. C. 301, Bombay *Tata Iron & Steel Co. Ltd.*, A. I. R. 1923 P. C. 148 referred to—*In re : Feroze Saha* 32 P. L. R. 234.

An application for a certificate that the case is a fit one to be taken on appeal to the Privy Council is made to the H. C. u/s 66A. The case is governed by Article 181, Limitation Act. In such cases the date of judgment is the date from which time has to be counted. Under section 12 of the Limitation Act, the party in such cases is entitled to the time required to obtain a copy of the judgment.

QUESTION OF IMPORTANCE.

The proper meaning of the words "previous year" under section 2 is a matter of importance and leave to appeal was sanctioned: *M. E. R. Malak* 35 C. W. N. notes portion. This empowers the Privy Council to hear appeal in cases which are certified by the High Court to be fit for appeal as involving a question of law which is either of private or public importance. In *Mahamad Ibrahim*, 109 I. C. 129, Nag., the Court held that leave should be granted when the question of law is an important one.

In the matter of *Nathumal*, A. I. R. 1920 L. 109, where an assessee succeeded to an old business, it was held not to be of any public or private importance within the meaning of section 109 of the Civil Procedure Code. Question of great private or public importance may be a ground of appeal. The object of section 66A is to enable an appeal to His Majesty in Council, in cases in which the High Court can certify that the question of law involved is one of great private or public importance—*In re : Delhi Cloth and General Mills Ltd.* A. I. R. 1927 Lah. 181.

COSTS.

The Crown applying to His Majesty in Council shall not get any cost and the Privy Council will not award it. It may be said in this connection that the Commissioner of Income-tax though he makes a reference is a party and may appeal to the Privy Council from an adverse decision on reference.

67. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Bar of suits in Civil Act, and no prosecution, suit or other Court. proceeding shall lie against any Gov-

ernment officer for anything in good faith done or intended to be done under this Act.

SUIT DOES NOT LIE.

Section 67 of the Act is not *ultra vires* by virtue of section 32 of the Government of India Act, because a suit for the recovery of the tax paid would not lie against the East India Co. prior to 1858 : *In the matter of R. N. Singha v. Secretary of State for India*, 109 I. C. 180 : A. I. R. 1928 Rang. 7. There it has been further held that no officer can be proceeded against either civilly or criminally for acts done in good faith. The words "good faith" imply the same meaning as in the Indian Penal Code. A suit does not lie for the refund of the tax already credited.

In the case of *Raja of Ramnad v. Secretary of State*, 52 Mad. 12, it was held that the section bars a suit for refund of Income-tax paid only in cases where the tax is legally irrecoverable in respect of the income and not where the income is not liable to assessment; but unless exacted by coercion, tax credited in respect of an income which is not chargeable to tax, is a voluntary payment and no suit lies for its recovery.

A suit does not lie to recover a tax which has been illegally assessed : *In the matter of Swami Natha Aiyer*, 1. I. T. C. 25. Attention is also invited to the decision in the case of *Khemchand Thawoomal*, 78 I. C. 438. A suit for refund of Income-tax refused by Income-tax authorities is not barred by S. 67, which refers only to assessment—*In re : Zenab bai* 136 I. C. 819. Though the procedure for grant of refund of Income-tax is ordinarily made part of the assessment procedure, it does not become a question of assessment. Therefore a suit for refund of Income-tax is not barred by section 67—*Sally Md. Haji v. S. B. Neogi & Co.*, A. I. R. 1932 R. 56.

Civil Court has no jurisdiction to interfere with the propriety of an order passed by an Income-tax Officer. In the case of *Kuyaram Ramdas*, 78 I. C. 940, it has been held : "If the Collector of Income-tax, who has been constituted as a Special Tribunal by the Income-tax Act, had assessed anything but income or had levied an assessment on the classes of income exempted by the Act, he would have overstepped the limits of his jurisdiction, his assessment would not have been under the Act. But in this case he professes to tax income and income only; there may be an error in his calculation, but his order is still one under the Act and if erroneous it is capable of rectification on appeal." *Vide also Forbes v. Secretary of State*, 42 Cal. 151 : 19 C. W. N. 138 and also the case of *Haji Rohimtulla Hajitarmahamad*, 92 I. C. 351.

67A. In computing the period of limitation prescribed for an appeal under this Act or for an application under section 66, the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded.

NOTES.

The insertion of this new section under Act 22 of 1930, gives the assessee a right to compute the period of limitation after excluding the days spent for obtaining copies of orders for an appeal under this Act or for an application under s. 66. Before the introduction of this new section, decisions are available that the High Court allowed the period spent for obtaining copies in computing the period of limitation. In the case of *Romanath Radidar*, 6 Rang. 175, the days spent for obtaining the copy were allowed to be deducted in computing the period of limitation. In *In the matter of Mahamad Hyat Haji Muhamad Sardar*, A. I. R. 1929 L. 170, it was held that the time spent in obtaining a copy of the Commissioner's order under section 66(2) can be excluded under section 29 of the Limitation Act (As amended in 1922). In computing the period for limitation for an application under section 66, the time requisite for obtaining a copy of the order which is the subject matter of reference can be excluded under section 67. But there is no provision of law authorising the exclusion of time requisite for obtaining a copy of the order of the I. T. O. A. C. on appeal. Sec. 12, Limitation Act does not apply to proceedings under section 66(3), Income Tax Act. *In re : Golapchand Chotey*, 133 I. C. 621.

APPLICABILITY OF THE LIMITATION ACT.

(a) That copies must be applied for before the limitation for the appeal or application expires.

(b) That where the court or office remains closed on the last day of limitation for filing an appeal or an application, an application for copies made on the next re-opening day must be held to have been made within proper time.

(c) That it is incumbent on the applicant to furnish the court or office with proper folios and stamps, etc., when required.

(d) That time for copies is allowed only up to the date when notice of the copy being ready is hung up and not up to the date of taking actual delivery.

As the Indian Limitation Act is applicable to the Income-tax Act, so far as procedure for taking copies is concerned

attention is invited to section 12(2) of the Indian Limitation Act.

COMPUTATION OF PERIOD OF LIMITATION

S 12—(1) In computing the period of Limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of Limitation prescribed for an appeal, an application for leave to appeal and an application for review of Judgment, the day on which the Judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

**S. 68. Repealed.*

ASSESSMENT OF INSURANCE COMPANIES.

Under Section 59(2)(ii) special rules have been made prescribing the manner in which and the procedure by which, income, profits and gains shall be arrived at in the case of insurance companies. The rules so made are rules 25 to 32 while rule 35 deals with the particular case of non-resident companies.

Under these rules the income, profits and gains of life assurance companies incorporated in British India are determined by taking the annual average of the total profits disclosed by the last actuarial valuation adding thereto any deductions made from the gross income in arriving at the actuarial valuation which are not admissible under the Income-tax Act and adding also any Indian income-tax deducted from or paid on income derived from investments before such income is received. If the Indian income-tax deducted at the source from interest on investments exceeds the tax on profits thus calculated, a refund is permitted of the amount by which the deduction from interest on investments exceeds the tax payable on profits. The same provisions under Rule 26 apply also to the determination of the income, profits and gains derived from the annuity and capital redemption business of life assurance companies, the profits of which can be ascertained from the results of an actuarial valuation.

For the purpose of refund in such cases it is the annual average of the tax deducted from the interest on the company's investments at the source that is to be taken and not, as has been sometimes claimed by insurance companies, the tax actually paid during a particular year of assessment. The reason for this is obvious. The method of assessment based on the previous valuation is itself a concession which, if the companies wish to enjoy, they must take as a whole. If there were to be a subsequent re-adjustment with reference to any

* Repealed by the Repealing Act XII of 1927.

of the transactions in the current actuarial period this would have to be made after the period was closed with reference to the transactions of the company as whole during that period, but this course would obviously not be suitable as it would mean very long deferred adjustments.

In other classes of insurance business (fire, marine, motor car, burglary, etc.) an annual calculation of profits is practicable, and Rule 29 provides in the case of those particular businesses for the method of treating sums placed by companies carrying on some or all of these branches of insurance business to reserves for unexpired risks. The reasons underlying the concession granted in this rule should be carefully noted. The profits derived, for instance, by a Fire Insurance Company from the premia which it receives cannot be finally determined until the policies issued in return for the premia have expired and the risks to the company thereunder have terminated, and, as the periods during which the risks endure will not ordinarily coincide with the period on which the assessment to income-tax is based, it is necessary to frame some estimate of the expenditure which the company will be called upon to incur owing to the fact that the risks covered by its premium income in the year of assessment have not entirely ceased. With proper safeguards to prevent manipulation of the accounts, this estimate can equitably be made by treating sums placed by insurance companies carrying on these classes of business to their reserves for unexpired risks as expenditure incurred solely for the purpose of earning the profits of the business. And where, as not infrequently occurs, the reserve is divided into two parts of which the first is intended to cover normal unexpired risks and is generally reckoned at a fixed percentage of the premiums, and the second is intended to cover exceptional losses from widespread calamities, the rule allows this treatment to additions to both parts of the reserve. The safeguards against abuse which the rule imposes are as follows :—

- (1) all sums on account of unexpired risks, which a company wishes to have treated as expenditure for income-tax or super-tax purposes, must actually be credited to a fund in the accounts of the company ;
- (2) they must also be specifically appropriated to meet liabilities under existing contracts ; and
- (3) the contracts must be with policy-holders.

The only other fund established by insurance companies for which special provision is made in the rules (Rule 30) is the Investment Reserve Fund. Amounts actually credited by an

insurance company of any kind in the ordinary accounts of its business for the accounting period to its Investment Reserve Fund for the purpose of meeting depreciation in the value of its securities can be treated as expenditure incurred for the purpose of earning the profits of the business in determining the taxable income of the insurance company in that year. The reasons for this departure from the general rule that reserves are not allowed as a business expense are as follows : In the first place it may be noted that these adjustments are not optional ; the company is required to make them in order to ensure that its assets are not overstated in the valuation. The transfer of sums by a Life Assurance Company to Investment Reserve Fund differs, moreover, essentially from the placing of amounts to reserve by a bank or ordinary commercial company, either for the purpose of extending its business, or for the provision of additional working capital ; the same thus placed to reserve are practically speaking composed of undistributed profits. There is also a substantial difference between this transaction on the part of an insurance company, and that by which a bank writes off the depreciation of the securities which it holds. A bank meets depreciation by reducing its Reserve Fund : a Life Insurance Company meets it by reducing its Life Assurance Funds, and this reduction may be made either by writing down its assets or by leaving the assets unaltered, and setting up as a liability an Investment Reserve Fund equal to the depreciation. The latter course is usually adopted : but in both cases the depreciation is a loss, and to tax the amount of depreciation would lead to the anomalous result that the greater the loss to the company the greater would be the amount which it is required to place to its Investment Reserve Fund, and consequently the greater the tax that would have to be paid.

On the other hand should the accounts show a credit for "appreciation" of assets, rule 30 provides for such appreciation being taxed. The words "as has been otherwise taken into account" in the latter portion of rule 30 mean "having been carried to the Life Assurance Fund or otherwise taken into account."

The reason for the use of the word "may" instead of "shall" in rules 27, 29 and 30 is that while the concessions conferred by these rules should be granted as a general practice the income-tax authorities retain a discretion to refuse them where the occasions have been abused.

Companies carrying on Dividing Society or Assessment business are in a different position to the insurance companies proper in that they have not to build up funds similar to the Life Assurance Fund of ordinary Life Assurance business, and

their profits are not ordinarily ascertainable by actuarial valuation. It is necessary, therefore, to fix some arbitrary method of determining the taxable income of companies transacting these kinds of business, and under rule 31 this is done by taknig 15 per cent. of the premium income in the "previous year." (Income-tax Manual, para 107).

CASE LAWS.

Premium income received by an Assurance Company from its members under participating policies or any part thereof is not liable to be assessed to income-tax under section 6 (5) and Sec. 10 : *New York Life Insurance Co. v. Style* (1889) 14 A. C. 381 app.—*In the matter of National Mutual Life Association of Australia*, A. I. R. 1931, Bom. 448.

The sum of money allocated by a Life Insurance Co., for distribution amongst policy-holders who are entitled to participation in the profit of the Company is a portion of the profits of the Company and as such chargeable to income-tax and not an expenditure incurred solely for earning the profits under section 10 (9) (*Last v. London Assn. Corp.* foll. 2 T. C. 100) : *In re : Bharat Ins. Co. Ltd. Lahore*, 132 I. C. 861.

The premium income derived by a Mutual Insurance Co. from its own members is not profit liable to Income-tax and the fact that Articles of Association provide that the Directors may at any time after the Company shall have carried on business for a period of at least 3 years, ascertain or cause to be ascertained the profit earned by the company during such period and divide them amongst members, which power in fact has never been exercised, does not make any manner of difference. The general principle on which the rule of law proceeds is that if a body of persons choose to contribute a sum of money for their own purposes, any surplus of that sum remaining after expenses have been paid cannot be regarded as profits—*In re : Mill Owner's Mutual Insurance Association Ltd.* 135 I. C. 813.

Rule 25 of the I. T. M. is mandatory in character and provides the only manner in which income, profits or gains of Life Insurance Company can be determined. The taxing authority has no discretion to take recourse to other provisions of the Act—*In re : Lakshmi Insurance Co. Ltd.* 136 I. C. 725.

1933-34

*Extract from**The Indian Finance Act, 1933.*

* * * * *

1. (1) This Act may be called the Indian Finance Act, 1933.

* * * * *

Income-tax and
super-tax.

5. (1) Income-tax for the year beginning on the 1st day of April, 1933, shall be charged at the rates specified in Part I of the Second Schedule, increased in each case, except in the case of total incomes of less than two thousand rupees, by one-fourth of the amount of the rate.

(2) The rates of super-tax for the year beginning on the 1st day of April, 1933, shall for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of the Second Schedule, increased in each case by one-fourth of the amount of the rate.

(3) For the purposes of the Second Schedule "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922.

(4) For the purpose of assessing and collecting income-tax on total incomes of less than two thousand rupees the Indian Income-tax Act, 1922, shall be deemed to be subject to the adaptations set out in Part III of the Second Schedule.

SCHEDULE II.

[See section 5.]

.PART I.

Rates of Income-tax.

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—

Rate.

- | | |
|--|--|
| <p>(1) When the total income is Rs. 1,000 or upwards,
but is less than Rs. 1,500 </p> | <p>Two pies in the rupee : (Provided that for the purpose of any assessment to be made for the year ending 31st March, 1934, the rate of income-tax applicable to such part of the total income of an assessee as is derived from salaries or from interest on securities paid in the financial year 1932-33 shall be four pies in the rupee, and for the purposes of refunds under sub-section (1) or sub-section (3) of section 48 in respect of dividends declared in the year ending 31st March, 1934, or of payments made in the said year of interest on securities or salaries, the rate applicable to the total income of the person claiming refund shall be at the rate of four pies.)</p> |
|--|--|

			Rate-
(2)	When the total income is Rs. 1,500 or upwards but is less than Rs. 2,000	... ..	Four pies in the rupee.
(3)	When the total income is Rs. 2,000 or upwards, but is less than Rs. 5,000	... ..	Six pies in the rupee.
(4)	When the total income is Rs. 5,000 or upwards, but is less than Rs. 10,000	... ..	Nine pies in the rupee.
(5)	When the total income is Rs. 10,000 or upwards, but is less than Rs. 15,000	... ..	One anna in the rupee.
(6)	When the total income is Rs. 15,000 or upwards, but is less than Rs. 20,000	... ..	One anna and four pies in the rupee.
(7)	When the total income is Rs. 20,000 or upwards, but is less than Rs. 30,000	... ..	One anna and seven pies in the rupee.
(8)	When the total income is Rs. 30,000 or upwards, but is less than Rs. 40,000	... ..	One anna and eleven pies in the rupee.
(9)	When the total income is Rs. 40,000 or upwards, but is less than Rs. 1,00,000	... ..	Two annas and one pie in the rupee.
(10)	When the total income is Rs. 1,00,000 or upwards	... ..	Two annas and two pies in the rupee.
B.	In the case of every company and registered firm, whatever its total income	... ..	Two annas and two pies in the rupee.

PART II.

Rates of Super-tax.

In respect of the excess over thirty thousand rupees of total income—

(1)	in the case of every company—	Rate
(a)	in respect of the first twenty thousand rupees of such excess	... .. Nil
(b)	for every rupee of the remainder of such excess	... .. One anna in the rupee.
(2)	(a) in the case of every Hindu undivided family	
	(i) in respect of the first forty-five thousand rupees of such excess	... .. Nil.
	(ii) for every rupee of the next twenty-five thousand rupees of such excess	... .. One anna and three pies in the rupee.

Rate.

- (b) in the case of every individual, unregistered firm and other association of individuals not being a registered firm or a company—
- (i) for every rupee of the first twenty thousand rupees of such excess ... Nine pies in the rupee.
- (ii) for every rupee of the next fifty thousand rupees of such excess ... One anna and three pies in the rupee.
- (c) in the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—
- (i) for every rupee of the next fifty thousand rupees of such excess ... One anna and nine pies in the rupee.
- (ii) for every rupee of the next fifty thousand rupees of such excess ... Two annas and three pies in the rupee.
- (iii) for every rupee of the next fifty thousand rupees of such excess ... Two annas and nine pies in the rupee.
- (iv) for every rupee of the next fifty thousand rupees of such excess ... Three annas and three pies in the rupee.
- (v) for every rupee of the next fifty thousand rupees of such excess ... Three annas and nine pies in the rupee.
- (vi) for every rupee of the next fifty thousand rupees of such excess ... Four annas and three pies in the rupee.
- (vii) for every rupee of the next fifty thousand rupees of such excess ... Four annas and nine pies in the rupee.
- (viii) for every rupee of the next fifty thousand rupees of such excess ... Five annas and three pies in the rupee.
- (ix) for every rupee of the next fifty thousand rupees of such excess ... Five annas and nine pies in the rupee.
- (x) for every rupee of the remainder of such excess ... Six annas and three pies in the rupee.

PART III.

Adaptations of the Indian Income-tax Act, 1922, to provide for the summary assessments of income-tax on total incomes of less than Rs. 2,000.

1. The Income-tax Officer may, save where he has served a notice under sub-section (2) of section 22 of the Indian Income-tax Act, 1922, make a summary assessment of the income of an assessee to the best of his judgment, and shall serve on the assessee a notice of demand in a form to be prescribed by the Central Board of Revenue ; and such notice shall be deemed to be a notice of demand under section 29 of that Act.

2. Any assessee in respect of whom such summary assessment has been made may, within thirty days of receipt of the notice of demand, make an application to the Income-tax Officer for the cancellation or revision of the assessment, and the Income-tax Officer shall, after examining any accounts and documents and hearing any evidence which the assessee may produce, and such other evidence as the Income-tax Officer may require, determine, by order in writing, the amount of the tax, if any, payable by the assessee, and such determination shall be final :

Provided that, if any assessee making such application files therewith a return of his income under sub-section (2) of section 22 of the Indian Income-tax Act, 1922, the application shall be deemed to be a return under that sub-section and shall be dealt with accordingly.

3. A copy of an order under paragraph 2 shall be served on the assessee to whom it relates and shall be deemed to be a notice of demand under section 29 of the Indian Income-tax Act, 1922.

4. The above procedure shall apply also to the assessment and collection during the financial year 1933-34 of incomes of Rs. 1,000 and upward and less than Rs. 2,000 which have escaped assessment in the financial year 1932-33.

Finance Act of 1934-35.

SCHEDULE II.

[See section 5.]

PART I.

Rates of Income-tax.

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—

Rate.

- | | | | |
|---|-----|-----|--|
| (1) When the total income is Rs. 1,000 or upwards, but is less than Rs. 1,500 | ... | ... | Two pies in the rupee. |
| (2) When the total income is Rs. 1,500 or upwards, but is less than Rs. 2,000 | ... | ... | Four pies in the rupee. |
| (3) When the total income is Rs. 2,000 or upwards, but is less than Rs. 5,000 | ... | ... | Six pies in the rupee. |
| (4) When the total income is Rs. 5,000 or upwards, but is less than Rs. 10,000 | ... | ... | Nine pies in the rupee. |
| (5) When the total income is Rs. 10,000 or upwards, but is less than Rs. 15,000 | ... | ... | One anna in the rupee. |
| (6) When the total income is Rs. 15,000 or upwards, but is less than Rs. 20,000 | ... | ... | One anna and four pies in the rupee. |
| (7) When the total income is Rs. 20,000 or upwards, but is less than Rs. 30,000 | ... | ... | One anna and seven pies in the rupee. |
| (8) When the total income is Rs. 30,000 or upwards, but is less than Rs. 40,000 | ... | ... | One anna and eleven pies in the rupee. |
| (9) When the total income is Rs. 40,000 or upwards, but is less than Rs. 1,00,000 | ... | ... | Two annas and one pie in the rupee. |
| (10) When the total income is Rs. 1,00,000 or upwards | ... | ... | Two annas and two pies in the rupee. |
- B. In the case of every company and registered firm, whatever its total income
- | | | |
|-----|-----|--------------------------------------|
| ... | ... | Two annas and two pies in the rupee. |
|-----|-----|--------------------------------------|

PART II.

Rates of super-tax.

In respect of the excess over thirty thousand rupees of total income—

	Rate.
(1) in the case of every company—	
(a) in respect of the first twenty thousand rupees of such excess Nil	
(b) for every rupee of the remainder of such excess	One anna in the rupee.
(2) (a) in the case of every Hindu undivided family—	
(i) in respect of the first forty-five thousand rupees of such excess ... Nil.	
(ii) for every rupee of the next twenty-five thousand rupees of such excess ...	One anna and three pies in the rupee.
(b) in the case of every individual, unregistered firm and other association of individuals not being a registered firm or a company—	
(i) for every rupee of the first twenty thousand rupees of such excess ...	Nine pies in the rupee.
(ii) for every rupee of the next fifty thousand rupees of such excess ...	One anna and three pies in the rupee.
(c) in the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—	
(i) for every rupee of the next fifty thousand rupees of such excess ...	One anna and nine pies in the rupee.
(ii) for every rupee of the next fifty thousand rupees of such excess ...	Two annas and three pies in the rupee.
(iii) for every rupee of the next fifty thousand rupees of such excess ...	Two annas and nine pies in the rupee.
(iv) for every rupee of the next fifty thousand rupees of such excess ...	Three annas and three pies in the rupee.
(v) for every rupee of the next fifty thousand rupees of such excess ...	Three annas and nine pies in the rupee.

PART III.

Adaptations of the Indian Income-tax Act, 1922, to provide for the summary assessments of income-tax on total incomes of less than Rs. 2,000.

1. The Income-tax Officer may, save where he has served a notice under sub-section (2) of section 22 of the Indian Income-tax Act, 1922, make a summary assessment of the income of an assessee to the best of his judgment, and shall serve on the assessee a notice of demand in a form to be prescribed by the Central Board of Revenue ; and such notice shall be deemed to be a notice of demand under section 29 of that Act.

2. Any assessee in respect of whom such summary assessment has been made, may, within thirty days of receipt of the notice of demand, make an application to the Income-tax Officer for the cancellation or revision of the assessment, and the Income-tax Officer shall, after examining any accounts and documents and hearing any evidence which the assessee may produce, and such other evidence as the Income-tax Officer may require, determine, by order in writing, the amount of the tax, if any, payable by the assessee, and such determination shall be final :

Provided that, if any assessee making such application files therewith a return of his income under sub-section (2) of section 22 of the Indian Income-tax Act, 1922, the application shall be deemed to be a return under that sub-section and shall be dealt with accordingly.

3. A copy of an order under paragraph 2 shall be served on the assessee to whom it relates and shall be deemed to be a notice of demand under section 29 of the Indian Income-tax Act, 1922.

4. The above procedure shall apply also to the assessment and collection during the financial year 1934-35 of incomes of Ra. 1,000 and upward and less than Rs. 2,000 which have escaped assessment in the financial year 1933-34.

ASSESSMENT OF LOWER LIMIT CASES

BY

SUMMARY PROCEDURE

PART I-A

ADAPTATIONS TO PROVIDE FOR THE SUMMARY ASSESSMENT OF SUCH INCOMES.

1. The Income-tax Officer may, save where he has served a notice under sub-section (2) of section 22 of the Indian Income-tax Act, 1922, make a summary assessment of the income of an assessee to the best of his judgment, and shall serve on the assessee a notice of demand in a form to be prescribed by the Central Board of Revenue ; and such notice shall be deemed to be a notice of demand under section 29 of the Act.

2. Any assessee in respect of whom such summary assessment has been made may, within thirty days of receipt of the notice of demand, make an application to the Income-tax Officer for the cancellation or revision of the assessment, and the Income-tax officer shall, after examining any accounts and documents and hearing any evidence which the assessee may produce, and such other evidence as the Income-tax Officer may require determine, by order in writing, the amount of the tax, if any, payable by the assessee, and such determination shall be final.

Provided that, if any assessee making such application files therewith a return of his income under sub-section (2) of section 22 of the Indian Income-tax Act, 1922, the application shall be deemed to be a return under that sub-section and shall be dealt with accordingly.

3. A copy of an order under paragraph 2 shall be

served on the assessee to whom it relates and shall be deemed to be a notice of Demand under section 29 of the Indian Income-tax Act, 1922.

4. The above procedure shall apply also to the assessment and collection during the financial year 1932-33 of incomes of Rs. 1,000 and upward and less than Rs. 2,000 which have escaped assessment in the financial year 1931-32*.

CENTRAL BOARD OF REVENUE.

Notification No. 24, Income-tax, dated the 7th May, 1932—In exercise of the powers conferred by section 59 of the Indian Income-tax Act, 1922 (XI of 1922), read with paragraph 1 of Part I-A of Schedule II to the Indian Finance (Supplementary and Extending) Act, 1931, the Central Board of Revenue hereby makes the following rule, the same having been previously published as required by sub-section (4) of the said section, namely :—

RULE.

The notice of demand referred to in paragraph 1 of Part I-A of Schedule II to the Indian Finance (Supplementary and Extending) Act, 1931, shall be served in the following form :—

NOTICE OF DEMAND UNDER PARAGRAPH 1 OF PART I-A OF THE SCHEDULE TO INDIAN FINANCE (SUPPLEMENTARY AND EXTENDING) ACT, 1931.

To

1. You have been summarily assessed for the year
to income-tax amounting to Rs. shown in the
copy of the assessment form sent herewith.

2. If you are dissatisfied with the assessment, you may apply to me within 30 days of the receipt of this notice for the cancellation or revision of the assessment. My orders on such application will be final, and will specify the time within which payment should then be made.

3. You may, however, also submit with such application a return of your income under section 22 (2) of the Indian Income-tax Act, in the form attached for the purpose. If you

*Inserted by the Indian Finance (Supplementary and Extending) Amendment Act, 1932, (IV of 1932).

do so, the demand now made will be cancelled and the assessment will be made under section 23 of the Act, and, subject to section 30 of the Act, an appeal will lie to the Assistant Commissioner.

4. If you do not present such an application (with or without a return) within the time specified in paragraph 2, you must pay the amount of Rs. _____ on or before the _____ to the officer in charge of the

Treasury

Government Sub-Treasury

The Agent, Imperial Bank of India

at _____ . For failure to do so, you will be liable to a penalty not exceeding the amount of tax.

5. Chalans to be presented with the amount at the time of payment are attached. Should you lose them, you should apply to the Income-tax Officer for fresh ones.

On payment you will be granted a receipt.

Income-tax Officer.

Dated _____

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NOTES.

SIGNIFICANCE OF THE INDIAN FINANCE (SUPPLEMENTARY AND EXTENDING) AMENDMENT ACT, 1932 (ACT IV OF 1932):—

Under para 2 of Part I-A of the Schedule for "Adaptations to provide for the summary assessment of such incomes", provision has been made by Income-tax Officer, having jurisdiction under Section 5 of the Indian Income-tax Act, 1922, which may make a summary assessment of the Income of an assessee to the best of his judgment.

Strictly and legally speaking, the Finance Act which determines the rate of tax to be imposed, cannot confer any right on the Income-tax Officer to adopt any procedure, other than that as laid down in the substantive Act. It is said that this is a temporary provision due to extreme financial difficulties. sponsored mainly for expediting assessments and collections without observing the formalities as enjoined by the Income-tax Act.

Whether this procedure will ensure speedy disposal of proceedings, is a matter for opinion; but the apprehension, in some quarters that the summary procedure will hard hit the general mass, particularly the illiterate mass, for its inherent technicalities and intricacies, is not at all unfounded.

But as the chance of challenging the legality of such assessments in the High Court is very remote, it is expected that such assessments will be made with utmost caution.

DUTIES OF ASSESSEE WHERE SUMMARY ASSESSMENTS ARE TAKEN RECOURSE TO :—

It must be clearly understood that it is not obligatory on the Income-tax Officer to make summary assessment. The language used is "may make a summary assessment of the income of an assessee to the best of his judgment." It is discretionary and not mandatory.

Any person, on whom a summary assessment has been made, may, within 30 days from receipt of the Notice of Demand, make an application to the Income-tax Officer, for the cancellation or revision of the assessment and the Income-tax Officer shall, after examining any accounts and documents and such other evidence which the assessee may produce and such other evidence as the Income-tax Officer may require, determine the amount of tax, if any, payable by the assessee; and such determination shall be final.

But the proviso in para 2 of Schedule I-A of the Indian Finance (Supplementary and Extending) Amendment Act, 1932, allows an assessee on whom a summary assessment has been made, a right of challenging the assessment. He may file an objection in writing along with a duly filled up Return under Section 22 (2), within 30 days from receipt of the Notice of Demand. An objection petition if filed along with the Return should be treated as a return under sub-section (2) of Section 22 and in that case all the formalities of the Income-tax Act of 1922, are to be observed.

The word "therewith" in the proviso makes it imperative on the assessee to file an objection in writing along with a duly filled up Return and where this is done, then and then alone, it shall be dealt with according to the provisions of law. To me it seems that this is the only interpretation on a literal construction of the Act.

PROCEDURE, WHEN RETURN IS FILED WITHOUT LODGING ANY FORMAL OBJECTION IN WRITING :—

Where an assessee, on whom a summary assessment has been made, files a duly filled up Return under Section 22(2) only, without filing an objection along with it, he cannot complain if the Income-tax Officer reject it altogether and confirm his best judgment summary assessment. To me it appears that the Income-tax Officer has no discretion in the matter; he is bound to arrive at an adjudication according to the letter of the law.

"If the words of an Act are clear, they must be followed, even though they lead to manifest absurdity. The court has nothing to do with the questions whether the Legislature has committed an absurdity. Where once the meaning is clear and

plain, it is not the province of the court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands according to the real sense of the word"—*In re : Mahamad Hayat Hazi Mahamad Sardar v. Commissioner of Income-tax, Punjab*, A. I. R. 1931, Lahore 87, relying on the decision in *In the matter of Queen v. The Judge of the City of London Court* 1 Q. B. 273.

The use of the term "therewith" is a bar to the Income-tax Officer's discretion and he has no other alternative than to reject it.

It is said that a Fiscal Statute should be administered with utmost care and a construction most beneficial to the assessee should always be made and in view of this where such a Return is filed without objection, the Income-tax Officer may, by implication, assume it to be in order, holding that the submission of a duly filled up Return under Section 22(2) is tantamount to filing an objection with the Return.

I am unable to agree with the above view and I am of opinion that even a prayer in the margin of the Return will be of no help to the assessee. When an assessee subsequently files an objection in writing within the prescribed time, the irregularity cannot be condoned by the Income-tax Officer, simply because the use of the word "therewith" is a standing bar.

PROCEDURE WHERE ONLY OBJECTION IN WRITING IS FILED.

The law allows an assessee when summary assessment has been resorted to, to make an application to the Income-tax Officer for the cancellation or revision of the assessment.

Generally, assessee who do not keep any regular accounts or even do not keep any accounts at all and who are not in a position to file a verified Return of their total income, can explain away their financial position by filing a formal objection.

When such an application is made, the demand is kept in abeyance and the Income-tax Officer on receipt of the objection shall examine any accounts and documents on which the assessee relies and hear any evidence which the assessee may produce and such other evidence which the Income-tax Officer may require. Thus the duty of the Income-tax Officer is quite clear. He is bound to examine the accounts produced by the assessee and is bound to hear any evidence adduced by the assessee. He cannot refuse to examine accounts and hear evidence. Then and then alone he shall determine the sum, if any, payable by the assessee. The assessment can be annulled or confirmed, reduced or enhanced; but when it is enhanced, the Income-tax Officer cannot exceed the taxable maximum *i.e.*, Rs. 1999.

Where in the opinion of the Income-tax Officer, the taxable figure exceeds Rs. 1,999, he shall serve a notice under Section 22(2) observing all the formalities of the Income-tax Act of 1922, provided he has jurisdiction under Section 5 of the Income-tax Act.

Unlike the case where Return is filed with objection, neither appeal under Section 30 nor petition under Section 27 lies because it is still an assessment under part I-A, and such determination of the tax shall be final.

POWERS AND LIMITATIONS OF THE INCOME-TAX OFFICER.

An Income-tax Officer has ample jurisdiction to make a summary assessment under the Finance (Supplementary and Extending) Amendment Act of 1932, to the best of his judgment.

The expression 'to the best of his judgment' means the same as in Section 23 (4) with this difference that when a summary assessment is enforced under the Supplementary and Extending Act, the best judgment assessment cannot exceed Rs. 1,999.

The Income-tax Officer has authority to recover tax under Section 46 of the Income-tax Act. He has jurisdiction to reject a duly filled up Return if not accompanied by an application. When formal objection alone is forthcoming, the Income-tax Officer has jurisdiction to do away with notices under Sections 23(2) and 22(4). Where in the opinion of the Income-tax Officer income of an assessee has partially or wholly escaped assessment, he can issue notice under Section 34 of the Income-tax Act. He can annul, reduce or enhance any assessment, and when he deals with mere objection his authority is undisputed and determination of the amount payable by the assessee is final.

LIMITATIONS OF POWER.

The Income-tax Officer has no power to extend the period of limitation, even where there is a sufficient cause and limitation runs from the date of service. He is bound to issue notice under Section 23(2) or 22(4) or under both the sections when an objection petition is filed along with the Return, otherwise he is to make an assessment under Section 23(1). Even where objection only is filed the Income-tax Officer shall examine any accounts and documents and hear any evidence adduced by the assessee. He has no arbitrary discretion in the matter. Paragraph 3 of Part I-A, makes it obligatory on the Income-tax Officer to serve on the assessee an order under paragraph 2. When the income of an assessee is found to be in excess of Rs. 1,999, Income-tax Officer cannot make a summary assessment.

INCOME-TAX OFFICER HAVING JURISDICTION TO MAKE AN ASSESSMENT FROM Rs. 1,000/- TO 1,999 :—

Generally an assessment, of income from Rs. 1000/- to Rs. 1,999, is called Lower limit assessment. Income-tax Officer having jurisdiction can proceed either summarily or otherwise.

When in the opinion of the Income-tax Officer the total income of an assessee exceeds Rs. 1,999/-, a summary assessment, under the Supplementary and Extending Act, is not at all permissible. In such circumstances, when the Income-tax Officer is out of jurisdiction, the only course open to him is to transfer the file to the Income-tax Officer having jurisdiction to deal with it.

But where the Lower limit Income-tax Officer has jurisdiction to deal with cases above Rs. 1,999, in that case he shall serve a notice under section 22(2) to the assessee.

When a summary assessment is made on Rs. 1500/- and the tax is paid by the assessee, but subsequently it transpires that he has an income from partnership business to the extent of Rs. 1500/- which has already been taken, making the total income to be Rs. 3,000/-, if such a contingency happens, an action under Section 34 is not tenable because it relates to an income above Rs. 1,999 where there is hardly any scope for summary assessment. The result will be that summary assessment shall have to be vacated and a fresh assessment is to be made according to the provisions of law.

But if an action under section 34 would have been permissible if the income which escaped assessments would have been, say, Rs. 300/- from the partnership concern, even a summary assessment under section 34 is justified.

PETITION UNDER SECTION 33 IF LIES.

Under Section 33 of the Income-tax Act, he has got a power of Review of any proceeding under the Income-tax Act. The main point for determination, therefore is whether summary assessment as provided in Part I-A is a proceeding under the Act. It is said that it is an adaptation of the Indian Income-tax Act, 1922, and as such this is a proceeding under the Income-tax Act.

Since a service of summary assessment is deemed to be a notice of demand under section 29, it can easily be construed that such summary assessment is a proceeding under the Act.

In view of this I do not see why a petition of review under S. 33 should not be allowed to lie before the Commissioner. It is said that an order of Income-tax Officer is final, but this does not mean that he is the final authority. It connotes that

when an order is passed, he cannot make any alteration or amendment of that order on any account.

Moreover though the power under section 33 is called the power of Review in the marginal note to the section, the real jurisdiction given under this section is not by way of review but by way of revision or superintendence.

Exemptions—Indian Finance (Supplementary and Extending) Act, 1931.

The class of persons specified in the schedule below are exempt, under Section 60 of the Act,—

- (a) from the operation of Section 7 or Section 8, of the Indian Finance (Supplementary and Extending) Act, 1931, in respect of income of the year 1930-31 or the year 1931-32 chargeable under the head 'salaries'; and
- (b) from the operation of Section 7 or Section 9, of the Indian Finance (Supplementary and Extending) Act, 1931, in respect of the income of the year 1931-32 or the year 1932-33, chargeable under the head "salaries."

SCHEDULE.

Classes of Persons Exempted.

1. All persons in the service of the Crown in India (including persons for the time being on foreign service as defined in the civil Service Regulations or the Fundamental Rules as the case may be) or holding any office the emoluments of which are defrayed from the revenues of India, whose income of the year 1931-32 or the year 1932-33, as the case may be, chargeable under the head 'salaries' is reduced—

- (a) under the operation of any law, the direction or order enacted or made for the purpose of effecting a temporary reduction of pay as an incident in the measures undertaken to meet the existing financial emergency, or

- (b) as the result of a voluntary surrender made with a like intent and accepted by the appropriate authority.

2. All servants of an eligible Railway Company, as defined in the Explanation hereto attached, whose income of the year 1931-32 or the year 1932-33, as the case may be, chargeable under the head 'salaries' is reduced—

- (a) under the operation of any order of the Railway company effecting a temporary reduction of pay as an incident in the measures undertaken to meet the existing financial emergency, or
- (b) as the result of a voluntary surrender made with a like intent and accepted by the Railway Company.

Explanation :—The expression "eligible Railway Company" means a Railway Company which has satisfied the Governor General in Council that it will pay to the Governor-General in Council a sum equal to the amount of the new or additional income-tax and super-tax which would have been payable by its servants under the operation of the aforesaid sections of the Indian Finance (Supplementary and Extending) Act, 1931, if the exemption herein contained had not been granted by the Governor-General in Council. (I. T. M. para 17-B).

NOTES.

It is often found that employees of the local authority often derive a portion of their salaries from the Government and a question arises if such officers are entitled to exemptions as laid down above. To me it seems that these exemptions are not applicable to such officers because emolument of such officers are not wholly defrayed from the revenues of India. But what about officers whose services are lent to Court of Wards etc. ?

EFFECT OF RESTORATION OF CUTS.

Government have decided to restore five per cent. cuts from April 1933. The effect of this restoration will be that there will be no exemption from Income-tax and surcharge.

ACT III OF 1926.

AN ACT TO DETERMINE THE LIABILITY OF CERTAIN GOVERNMENTS TO TAXATION IN BRITISH INDIA IN RESPECT OF TRADING OPERATIONS.

Whereas it is expedient to determine the Liability to taxation for the time being in force in British India of the Government of any part of His Majesty's dominions, exclusive of British India, in respect of any trade or business carried on by or on behalf of such Government; it is hereby enacted as follows :—

1. (1) This Act may be called the Government
Short title and Trading Taxation Act, 1926.
commencement.

(2) It shall come into force on such date* as the Governor-General in Council may, by notification in the Gazette of India, appoint.

2. (1) Where a trade or business of any kind is carried on by or on behalf of the Government of any part of His Majesty's Dominions, exclusive of British India, that Government shall, in respect of the trade or business and of all operations connected therewith, all property occupied in British India and all goods owned in British India for the purposes thereof, and all income arising in connection therewith, be liable

(a) to taxation under the Indian Income-tax Act, XI of 1922. 1922, in the same manner and to the same extent as in the like case a company would be liable ;

(b) to all other taxation for the time being in force in British India in the same manner as in the like case any other person would be liable.

(2) For the purposes of the levy and collection of income-tax under the Indian Income-tax Act, 1922, in

* The Act came into force with effect from the 1st April, 1926.

accordance with the provisions of sub-section (1), any Government to which that sub-section applies shall be deemed to be a company within the meaning of that Act, and the provisions of that Act shall apply accordingly.

(3) In this section the expression "His Majesty's Dominions" includes any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's Dominions.

PART II. RULES.

BOARD OF INLAND REVENUE.

*Notification No. 3-I. T., dated the 1st April 1922 as
subsequently amended.*

In exercise of the powers conferred by section 59 of the Indian Income-tax Act, 1922 (XI of 1922), the Board of Inland Revenue has made the following rules, namely:—

1. These rules may be called the Indian Income-tax Rules 1922.

2. Any firm constituted under an instrument of partnership specifying the individual shares of the partners may, for the purposes of clause (14) of section 2 of the Indian income-tax Act, 1922 (hereinafter in these rules referred to as the Act), register with the Income-tax Officer the particulars contained in the said instrument on application in this behalf made by the partners or by any of them.

Such application shall be made—

- (a) before the income of the firm is assessed for any year under section 23, or
- (b) if no part of the income of the firm has been assessed for any year under section 23, before the income of the firm is assessed under section 34, or
- (c) with the permission of the Assistant Commissioner hearing an appeal under section 30, before the assessment is confirmed, reduced, enhanced or annulled, or, if Assistant Commissioner sets aside the assessment and directs the Income-tax Officer to make a fresh assessment, before such fresh assessment is made.

3. The application referred to in rule 2 shall be made in the form annexed to this rule and shall be accompanied by the original instrument of partnership under which the firm is constituted together with a copy thereof; provided that if the Income-tax Officer is satisfied that for some sufficient reason the original instrument cannot conveniently be pro-

duced, he may accept a copy of it certified in writing by one of the partners to be a correct copy, and in such a case the application shall be accompanied by a duplicate copy.

FORM I.

Form of application for registration of a firm under section 2(14) of the Indian Income-tax Act, 1922.

To

THE INCOME-TAX OFFICER,

Dated

19

$\frac{I}{We}$ beg to apply for the registration of $\frac{my}{our}$ firm under section 2(14) of the Indian Income-tax Act, 1922.

2. $\frac{The\ original}{A\ certified\ copy}$ of the instrument of partnership under which the firm is constituted specifying the individual shares of the partners together with $\frac{a\ copy}{puplicate\ copy}$ is enclosed. The prescribed particulars are given below.

3. $\frac{I}{We}$ do hereby certify that the profits of the current year will be actually divided or credited in accordance with the shares shown in this partnership deed.

Signature

Address

Name and address of the firm.	Names of the partners in the firm with the share of each in the business.	Date on which instrument of partnership was executed.	Date, if any, on which the instrument of partnership was last registered in the Income-tax Officer's office.	Remarks.

I
We do hereby certify that the information given above is correct.

Signature (s)

4. (I) On the production of the original instrument of partnership or on the acceptance by the Income-tax Officer of a certified copy thereof, the Income-tax Officer shall enter in writing at the foot of the instrument or copy, as the case may be, the following certificate, namely:—

"This instrument of partnership (or this certified copy of an instrument of partnership) has this day been registered with me, the Income-tax Officer for _____ in the province of _____ under clause (14) of section 2 of the Indian Income-tax Act, 1922. This certificate of registration has effect from the _____ day of April 19 _____ up to the 31st day of March 19 _____."

(2) The certificate shall be signed and dated by the Income-tax Officer who shall thereupon return to the applicant the instrument of partnership or the certified copy thereof, as the case may be, and shall retain the copy or duplicate copy thereof.

5. The certificate of registration granted under rule 4 shall have effect from the date of registration.

6. A certificate of registration granted under rule 4 shall have effect up to the end of the financial year in which it is granted, but shall be renewed by the Income-tax Officer from year to year on application made to him in that behalf and accompanied by a certificate signed by one of the partners of the firm that the constitution of the firm as specified in the instrument of partnership remains unaltered. Such application shall be made within the time and subject to the conditions, if any, which are specified in clause (a), clause (b), or clause (c), as the case may be of rule 2.

7. Under section 9(1) (vi) of the Act, the sum to be allowed in respect of collection charges shall not exceed 6 per cent of the annual value of the property.

8. An allowance under section 10(2)(vi) of the Act in respect of depreciation of buildings, machinery, plant or furniture shall be made in accordance with the following statement :—

Class of buildings, machinery, plant or furniture.	Rate.	Remarks.
	Percentage on prime cost.	
1. Buildings*—		
(1) First class substantial buildings of selected materials ...	2½	*Double these rates may be allowed for buildings used in industries which cause special deterioration, such as chemical works, soap and candle works, paper mills and tanneries.
(2) Buildings of less substantial construction	5	
(3) Purely temporary erections such as wooden structures.	10	
2. Machinery, Plant or Furniture†—		
General rate	5	†The special rates for electrical machinery given below may be adopted at firm's option, for that portion of their machinery.
Rates sanctioned for special industries— Flour Mills, Rice Mills, Bone Mills, Sugar Works, Distilleries, Ice Factories, Aerating Gas Factories, Match Factories	6½	
Paper Mills, Ship Building and Engineering Works, Iron and Brass Foundries, Aluminium Factories, Electrical Engineering Works, Motor Car Repairing Works, Galvanizing Works, Patent Stone Works, Oil Extraction Factories, Chemical Works, soap and Candle Works, Lime Works. Saw Mills, Dyeing and Bleaching Works, Furniture and plant in hotels and boarding houses. Cement Works using rotary kilns, Plant and Machinery used for the manufacture of wire and wire nails ...	7½	
Type writers, Plant used in connection with brick manufacture, Tile-making Machinery, Plant or Machinery used in the manufacture of Vegetable Ghee, Optical Machinery, Glass Factories, Telephone Companies, Mines and Quarries,		

Class of buildings, machinery, plant or furniture.	Rate.	Remarks.
	Percentage on prime cost.	
Tubewell Boring Plant, Concrete Pile Driving Machines, Plant or Machinery used in the Manufacture of Coke, Machinery used in the manufacture of Concrete Pipes	10	
Sewing machines for canvas or leather	12½	
Motor cars used solely for the purpose of business	15	
Rates sanctioned for special industries—		
Indigenous Sugar-cane Crushers (<i>Gohlus</i> or <i>Belans</i>)	15	
Moulds used in the manufacture of Concrete Pipes	16	
Motor taxis, motor lorries and motor buses	20	
Ropeway ropes and trestle sheaves and connected parts	25	
Salt Works—		
(1) Machinery, Plant, Locomotives, Waggon and Rolling Stock ...	10	
(2) Tugs, Barges, Motor Launches and Floating Plant	7½	
(3) General Plant and Machinery used in Engineering Shops	7½	
(4) Reservoirs, Condensers, Salt pans, Delivery Channels and Piers, if constructed of Masonry, Concrete, Cement, Asphalt, or similar materials	5	
(5) Piers, Quays and Jetties constructed entirely or mainly of Steel ...	5	
(6) Piers, Quays and Jetties constructed entirely or mainly of wood ...	10	
(7) Pipe lines for converting if constructed of Masonry, Concrete, Cement, Asphalt or similar Materials	10	
Ropeway structures—		
(1) Trestle and station steel work ...	5	
(2) Driving and tension gearing ...	7½	
(3) Carriers	10	
3. Electrical Machinery—		
(a) Batteries	15	

Class of buildings, machinery, plant or furniture.	Rate.	Remarks.
	Percentage on prime cost.	
(b) Other electrical machinery, including electrical generators, motors (other than tramway motors), switchgear and instruments, transformers and other stationery plant and wiring and fittings of electric light and fan installations ...	7½	
(c) Underground cables and wires ...	6	
(d) Overhead cables and wires ...	2½	
4. Hydro-Electric concerns— Hydraulic works, pipe lines, sluices, and all other items not otherwise provided for in this statement ...	2½	
5. Electric Tramways—		
Permanent way—		
(a) Not exceeding 50,000 car miles per mile of track per annum ...	6½	
(b) Exceeding 50,000 and not exceeding 75,000 car miles per mile of track per annum ...	7½	
(c) Exceeding 75,000 and not exceeding 1,25,000 car miles per mile of track per annum ...	8½	
Cars—car tracks, car bodies, electrical equipment and motors ...	7	
General plant, machinery and tools ...	5	
6. Mineral Oil concerns—		
A. Refineries—		
(1) Boilers ...	10	
(2) Prime movers ...	5	
(3) Process plant ...	10	
B. Field operations—		
(1) Boilers ...	10	
(2) Prime movers ...	5	
(3) Process plant ...	7½	
Except for the following items—		
(1) Below ground—All to be charged to revenue ...	...
(2) Above ground—		
(a) Portable boilers, drilling tools, wellhead tank, rigs etc. ...	25	
(b) Storage tanks ...	10	
(c) Pipe lines—		
(i) Fixed boilers ...	10	
(ii) Prime movers ...	7½	
(iii) Pipe line ...	10	

Class of buildings, machinery, plant or furniture.	Rate.	Remarks.	
	Percent- age on prime cost.		
7. Ships—			
(1) Ocean—			
(a) Steam	5	†“Speed Boats” means a motor-driven boat with a high speed internal combustion engine capable of propelling the boat at a speed exceeding 15 miles per hour in still water, and so designed that when running at speed it will plane—i.e., its bow will rise from the water.	
(b) Sail or tug	4		
(2) Inland—			
(a) Steamers (over 120 ft. in length) ...	5		
(b) Steamers including cargo launches (120 ft. in length and under) ...	6		
(c) Tug boats	7½		
(d) Iron or steel flats for cargo, etc. ...	5		
(e) Wooden cargo boats up to 50 tons capacity	10		
(f) Wooden cargo boats over 50 tons capacity	7½		
(g) Motor launches	10		
(h) Speed boats†	15		
8. Mines and Quarries—			
(1) Railway siding* (excluding rails) ...	5	*Depreciation on rails used for tramways and sidings and in inclines where the rails are the property of the assessee, is allowed at 10 per cent. under item 2 above (plant used in connection with Mines and Quarries) in addition to any depreciation allowance on the cost of constructing the tramways, sidings or inclines.	
(2) Shafts	5		
(3) Inclines*	5		
(4) Tramways on the surface* (excluding rails)	10		
9. Aeroplane—			
(1) Aircraft	25		
(2) Aero-engine	23		
(3) Aerial Photographic apparatus ...	20		

8-A. Allowances under section 11 (2) (ii) of the Act in respect of depreciation of buildings, machinery, plant or furniture shall be in accordance with the rates prescribed in the statement attached to rule 8; and in respect of apparatus, appliances or other capital assets not covered by that statement, the allowance shall be at the rate of 5 per cent. per annum on the prime cost.

9. For the purpose of obtaining an allowance for depreciation under proviso (a) to section 10 (2) (vi) of the Act, the assessee shall furnish particulars to the Income-tax Officer in the following form :—

Description of buildings, machinery, plant or furniture.	Original cost.	Capital expenditure during the year for additions, alterations, improvements and extensions.	Date from which used for the purposes of the business.	Particulars (including original cost, depreciation allowed and value realised by sale of scrap value) of obsolete machinery, plant or furniture sold or discarded during the year, with dates on which first brought into use and sold or discarded.	Remarks
1	1-A	2	3	4	5

I, _____, declare that to the best of my information and belief the buildings, machinery, plant and furniture described in column 1 of the above statement were the property of _____ during the year ended _____ and that the particulars entered in the statement are correct and complete.

Place

Date

Signature

Designation

9-A. For the purpose of obtaining an allowance for depreciation under section 11 (2) (ii) of the Act, the assessee shall furnish particulars to the Income-tax Officer in the form included in rule 9, entering in columns 1 and 4 references not only to buildings, machinery, plant or furniture but also to apparatus, appliances and other capital assets.

10. All sums deducted in accordance with the provisions of section 18 of the Act shall be paid by the person making the deduction to the credit of the Government of India on the same day as the deduction is made in the case of deduction by or on behalf of Government, and within one week from the date of such deduction in all other cases :

Provided that the Income-tax Officer may, in special cases, and with the approval of the Assistant Commissioner, permit a local authority, company, public body or association, or a private employer to pay the income-tax deducted from salaries quarterly on June 15th, September 15th, December 15th, and March 15th.

11. In the case of income chargeable under the head 'Salaries,' where deduction is not made by or on behalf of Government, the person paying the salary shall pay to the credit of the Government of India by remitting the amount to the Income-tax Officer concerned or to such officer as he may direct and shall send therewith a statement showing the name of the employee from whose salary the tax has been deducted, the period for which the salary has been paid, the gross amount of the salary, the deduction for a provident fund or insurance premia, and the amount of tax deducted.

11A. The prescribed rate of exchange for the calculation of the value in rupees of any income chargeable under the head 'Salaries' which is payable to the assessee out of India by or on behalf of Government shall be the rate notified by the Controller of the Currency in respect of the recovery of contributions to the Indian Civil Service Fund for the month in which such income is payable.

12. In the case of income chargeable under the head 'Interest on securities,' where the deduction is not made by or on behalf of Government, the person responsible for paying the interest shall pay to the credit of the Government of India by remitting the amount to the Income-tax Officer concerned or to such officer as he may direct with a statement showing the following particulars :—

(i) Description of securities.

(ii) Numbers of securities.

- (iii) Dates of securities.
- (iv) Amount of securities.
- (v) Period for which interest is drawn.
- (vi) Amount of interest, and
- (vii) Amount of tax.

13. The certificate to be furnished under section 18(9) of the Act by any person paying interest chargeable to income-tax on any security of the Government of India or of a local Government shall be in the following form :—
Draft No. ⁽¹⁾

Certified that Rs.		being income-
tax at the rate of	pies per rupee has	been deducted by
draft of this date from Rs.		being the
amount of interest		
for Rs.	on ⁽²⁾	
for Rs.		standing in the name of
	for Rs.	

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Superintendent or Principal Officer.

To be signed by claimant.

I hereby declare that the securities on which interest as above specified has been received were my own property and were in the possession of at the time when income-tax was deducted. ;

Signature

Date

⁽¹⁾ This number also appears in the interest pages on the back of the Securities.

⁽²⁾ Name of Security.

(N.B.—The securities to be produced when required in support of any claim).

13A. The certificate ⁽¹⁾ to be furnished under section 18(9) of the Act by the person paying any interest on debentures or other securities for money issued by or on behalf of a local authority or a company shall be in the following form :—

Name of Local Authority/Company.

Address

To ⁽²⁾

Name and address of payee ⁽³⁾

I/We hereby certify that Rs. _____ being income-tax at the rate of _____ pies per rupee has been deducted from Rs. _____ being the amount of interest at the rate of _____ per cent per annum due ⁽⁴⁾ _____ on debentures Nos. _____ of Rs. _____ each of the ⁽⁵⁾ _____ and that it has been or will, within the prescribed period, be paid by me/us to the Government of India at _____

Superintendent, Public Debt Office
or Principal Officer or Managing Agents.

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(To be signed by claimant.)

I hereby declare that the securities on which interest as above specified has been received, were my own property and were in the possession of _____ at the time when income-tax was deducted.

Signature

Date

14. The certificate to be furnished by the principal officer of a company under section 20 shall be in the following form :—

(Name of Company)

(Address of Company)

Date

⁽¹⁾ In the case of bearer debentures or bonds a certificate under section 18(9) shall only be given if the recipient of the interest declares the name and address of the real owner of the security at the time of receiving the interest.

⁽²⁾ Name and address of the owner of security should be given here. In the case of bearer debentures or bonds, these particulars are to be given as declared by the payee concerned.

⁽³⁾ To be completed only in the case of bearer debentures or bonds.

⁽⁴⁾ The date on which interest is payable.

⁽⁵⁾ Here enter the name of the local authority or the company.

WARRANT for Rs. (in words and figures or, if the certificate is crossed by an entry in words stating that the amount of dividend is under the next multiple of Rs. 50 above that amount, in figures only) , being dividend ⁽¹⁾ at the rate of Rs. (in words and figures) per share for the ⁽²⁾ ending on the day of 19 , ⁽³⁾ on ⁽⁴⁾ shares in this company, registered in the name of This dividend was declared at the ⁽⁵⁾ meeting held on the ⁽⁶⁾

192 .

I We hereby certify that income-tax on the entire on such part, as is liable to be charged to Indian Income-tax of the profits and gains of the company, of which this dividend forms a part, has been, or will be, duly paid by $\frac{\text{me}}{\text{us}}$ to the Government of India.

Signature

Office

(To be signed by the claimant.)

I hereby certify that the dividend above mentioned relates to shares which were my own property at the time when the dividend was declared and were in the possession of

Signature

Date

(¹) Or Dividend and bonus.

(²) Year or half year, as the case may be.

(³) Here enter whether free of income-tax or not.

(⁴) Here enter number and description of shares.

(⁵) Here specify number and nature of meeting.

(⁶) Here enter date.

(N.B.—The securities to be produced when required in support of any claim.)

15. The returns for Government officers under section 21 of the Act shall be prepared and submitted to the Income-tax Officer by :—

- (a) Civil Audit officers for all gazetted officers and others who draw their pay from audit offices on separate bills ; and also for all pensioners who draw their pensions from audit offices.
- (b) Treasury officers for all gazetted officers and others who draw their pay from treasuries on separate bills without counter-signature ; and also for all pensioners who draw their pensions from treasuries.
- (c) Heads of Civil or Military offices for all non-gazetted officers whose pay is drawn on establishment bills or on bills countersigned by the head of office.
- (d) Forest disbursing officers and Public Works Department disbursing officers in cases where direct payment from treasuries is not made, for themselves and their establishments.
- (e) Head Postmasters for (i) themselves, their gazetted subordinates and the establishments of which the establishment pay bills are prepared by them and (ii) gazetted supervising and controlling officers of whose headquarters post office they are in charge ; Head Record Clerks, Railway Mail Service, for themselves and all the staff whose pay is drawn in their establishment pay bills ; the Disbursing Officers in the case of the Administrative and the Audit offices.
- (f) Controllers of Military Accounts (including Divisional Military Supply, Marine, Field and War Controllers) for all gazetted military officers under their audit.
- (g) Disbursing officers in the Military Works Department for themselves and their establishments.
- (h) Chief Accounts officer or Chief Auditors of Railways concerned for all railway employees under their audit.

16. The minimum income under the head "Salaries" referred to in section 21 (a), shall be Rs. 2000 per annum.

17. The return to be delivered to the Income-tax officer under section 21 of the Act shall be in the following form :—

THE INDIAN INCOME-TAX RULES

1	Serial number.
2	Name of person.
3	Postal address of residence.
4	Appointment or nature of employment.
5	Total amount of salary, wages, annuity or pension paid during the year ending on 31st March 19 .
6	House allowance or value of rent-free quarters.
6A	Amount of bonus, gratuity, fees, commission, perquisites or allowances (other than those shown in column 6) or profits in lieu of or in addition to salary or wages (each to be shown separately).
7	Total of columns 5, 6 and 6A.
8	Deduction on account of Provident and other funds [proviso to section 7 (1)].
8A	Deduction on account of Life Insurance premia (section 15).
9	Net amount chargeable.
10	Amount of tax payable.
11	Reduction under section 17.
12	Amount of tax deducted.
12A	Whether person contributes to a recognised provident fund (Chapter IXA).
13	Remarks.

I certify that the above statement contains a complete list of the total amounts paid by _____ to all persons who were receiving income on the 31st day of March 19 _____ at the rate of Rs. 2,000 per annum, or have received during the year ended on that day not less than Rs. 2,000 in respect of salary, wages, annuity, pension, gratuity, fees,

commissions, perquisites, or profits in lieu of or in addition to salary or wages, and that all the particulars stated are correct.

*Signature of person by whom
the return is delivered.*

Date

18. (1) The return of total income of companies required under section 22 (1) shall be in the following form and shall be accompanied by a copy of the profit and loss account referred to therein :—

Income, profits or gains from business, trade, commerce.

Income, profits, or gains as per profit and loss account for the year ended 19	Rs.	A.	P.
<i>Add</i> —Any amount debited in the accounts in respect of—			
1. Reserve for bad debts
2. Sums carried to reserve for provident or other funds
3. Expenditure of the nature of charity or present
4. Expenditure of the nature of capital
5. Income-tax or Super-tax
6. Rental value of property owned and occupied
7. Cost of additions to, or alterations, extensions, improvements of, any of the assets of the business
8. Interest on reserve or other funds
9. Losses sustained in former years
10. Losses recoverable under an insurance or contract of indemnity
11. Depreciation of any of the assets of the business
12. Expenses not incurred solely for the purpose of earning the profits
TOTAL			
<i>Deduct</i> —Any profits or income included in the accounts on account of :—			
(a) Interest (net amount) on securities taxed at source.			
(b) Interest on securities tax free.			
(c) Dividends (net amount) from companies taxed in British India.			
*(d) Other items already taxed at source (specify details).			
Balance			

If the company owns any property not occupied for the purposes of the business a statement in the form prescribed in schedule A to rule 19 should be attached with particulars of the credit and debit on account of such property entered in the accounts.

Declaration.

*Note.—If any other deduction is to be claimed, please give particulars thereof in a separate letter to be forwarded with the return.

I, the

[Secretary,

etc., (see section 2(12) of the Act)] of the
(name of Company) declare that the information against each
head in this return is correctly given as shown in the books of
the Company as also in the accounts which have been duly
audited by the auditors of the Company and which have been
adopted by the shareholders of the Company.

(Signature)

(Designation)

Dated

19

(2) The company shall also attach to the return a statement showing the sums charged in the accounts under the provisions of section 58K(2).

19. The return of total income for individuals, firms, Hindu undivided families and other associations of individuals not being companies required under section 22(2) shall be in the following form :—

Statement of total income during the previous year.

1 Sources of Income.	2 Amount of profits or gains or income during the previous year.	3 Tax already charged on the income.
	Rs.	Rs.
1. Salaries (including wages, annuity, pension, gratuity, fees, commission, allowances, perquisites, including rent-free quarters), or profits received in lieu of, or in addition to salary or wages ... [See note (1)] 1A. The contributions made by an employer to the account in a recognised provident fund of the person making the return ... 1B. The interest accruing to the account mentioned in 1A which is not exempt from income-tax [Section 58F (2)] ... 1C. Interest accruing to the account mentioned in 1A, which is exempt from Income-tax [Section 58F (2)] ... 2. Interest on securities (including debentures) already taxed ... (2) 3. Interest on securities of the Government of India or of local Governments declared to be income-tax free ... (3) 4. Property as shown in detail in Schedule A ... (4) 5. Business, trade, commerce, manufacture, or dealings in property, shares or securities (details as in note 5) ... (5) 6. Profession ... (6) 7. Dividends from Companies (net) ... (7) 8. Interest on mortgages, loans, fixed deposits, current accounts, etc., not bearing income from business ... 9. Ground rent ... 10. Any source other than those mentioned above including any income earned in partnership with others ... (8) Total		

Statement of total income during the previous year—contd.

1 Sources of Income.	2 Amount of profits or gains or income during the previous year.	3 Tax already charged on the income.
Deductions claimed— (a) on account of insurance premia ... (b) on account of contributions to a provident fund to which the Provident Funds Act applies ... (c) on account of contributions to a recognised provident fund [section 58A (a)] ... (d) on account of interest on contributions to a recognised Provident Fund and accumulations thereof which is exempt from income-tax (Section 58F (2)]. ... (e) others ...	Rs.	Rs.

I declare that to the best of my knowledge and belief the information given in the above statement is correct and complete, that the amounts of income shown are truly stated and relate to the year ended _____ and that no other income

accrued or arose or was received by $\frac{\text{me}}{\frac{\text{the firm}}{\frac{\text{the family}}{\text{the association}}}}$ during the

said year and that $\frac{\text{I}}{\frac{\text{the firm}}{\frac{\text{the family}}{\text{the association}}}}$ had during the said year no other sources of income.

Signature

Date

N.B.—(a) Income accruing to you outside British India received in British India is liable to taxation, and must be entered by you in the form.

(b) All income from whatever source derived must be entered in the form, including income received by you as a partner of a firm.

NOTE I.—In column 2 should be shown the gross amount of salary and not the net amount after deduction on account of income-tax provident funds, etc.

NOTE 2.—“Interest on securities” means the interest on promissory notes or bonds issued by the Government of India or local Government, or the interest on debentures or other securities for money issued by or on behalf of a local authority or company. Where income-tax has been deducted from the interest, or where the interest has been paid income-tax free, the amount of tax so deducted or paid should be added to the amount of interest actually received, and the gross amount so arrived at should be entered in column 2 of the statement. The term “interest on securities” does not include interest on fixed deposits or mortgages or other loans, which have to be shown under heading 6.

The interest on securities of the Government of India or of local Government declared to be income-tax free should be shown under head 3. Those which are not declared to be income-tax free should be included under this head.

Entries under this head must be supported by the certificate issued by the person or company paying the interest under section 18(1) of the Act.

NOTE 3.—(a) The income-tax payable on the interest receivable on a security of a local Government issued income-tax free is payable by the local Government and not by the holder of the security.

(b) Only the interest on securities of the *Government of India* or of a local Government declared to be income-tax free should be entered against this head. Such interest will not be charged to income-tax, but it must be included in the statement of total income in order to ascertain the rate of income-tax chargeable on other income. *It is chargeable to super-tax.*

(c) Particulars of any interest on securities issued by other authorities and stated to be free of income-tax should be entered against head 2, as income-tax on such interest is actually paid by these authorities on behalf of the recipients.

NOTE 4.—The tax is payable under this head in respect of the *bona fide* annual value of any buildings or lands appurtenant thereto of which you are the owner, other than such portions of such buildings and lands as you may occupy for the purpose of your business.

SCHEDULE A.

1	Serial number.	
2	Name of village or town where the property is situated.	
3	Name of mohalla or street and number of property if any.	
4	In the case of municipalities the name of the person in whose name the property stands in the municipal registers.	
5	Where the property is occupied by owner or is let.	
6	Annual letting value of the property.	
6A	Period during which the property remained vacant.	
7	Amount of rent actually received for the property if let.	

SCHEDULE A—*concl'd.*

8 Of one-sixth of the annual letting value shown in column 6.	Deductions.	
9 Premium paid to insure the property against damage or destruction.		
10 Interest paid on a mortgage or charge on the property.		
11 Ground rent paid for the property.		
12 Land revenue paid for the property.		
13 Collection charges paid.		
13A Amount claimed on account of property remaining vacant.		
14 Total of columns 8 to 13A.		
15 Net amount to be carried over to the front of the form.		

NOTE 5.—(a) Where you keep your accounts on the mercantile accountancy or book profits system, you must file return in the following form :—

Income, profits or gains from business, trade, commerce.

Income, profits or gains as per Profit and Loss Account for the year ended 19	Rs.
Add—Any amount debited in the accounts in respect of—	
1. Reserve for bad debts	
2. Sums carried to reserve for provident or other funds	
3. Expenditure of the nature of charity or presents	
4. Expenditure of the nature of capital	
5. Income-tax or Super-tax	
6. Drawings or salary of proprietor or partners	
7. Rental value of property owned and occupied	
8. Cost of additions to, or alterations, extensions, improvements of any of the assets of the business	
9. Interest on the proprietor's or partner's capital including interest on reserve, or other funds	
10. Losses sustained in former years	
11. Losses recoverable under an insurance or contract of indemnity	
12. Depreciation of any of the assets of the business	
13. Private or personal expenses and expenses not incurred solely for the purpose of earning the profits	
TOTAL	
Deduct—Any profits included in the account already charged to Indian income-tax and the interest on securities of the Government of India or of local Governments declared to be income-tax free	
BALANCE.	

Signature of the person making the return.

Date

19

(b) Where you do not keep your accounts on the mercantile accountancy or book profits system, but on a cash basis, you must file a statement showing how you arrive at the taxable profits, *i.e.*, showing details of the gross receipts and of the expenditure you propose to set against those receipts. No deductions are permissible on account of—

- (i) Property owned and occupied by the owner of a business for the purposes of a business ;
- (ii) Additions to or alterations, extensions, or improvements of any of the assets of the business ;
- (iii) Interest on the capital of the proprietors or partners of the business ;
- (iv) Bad debts not actually written-off in the accounts ;
- (v) Losses sustained in previous years ;
- (vi) Reserves of any kind ;
- (vii) Sums paid on account of the income-tax or super-tax or any tax levied by a local authority other than local rates or municipal taxes in respect of the portion of the premises used for the purpose of the business ;
- (viii) Any expenditure of the nature of charity or a present ;
- (ix) Any expenditure of the nature of capital ;
- (x) Any loss recoverable under an insurance or a contract of indemnity ;
- (xi) Depreciation of any kind other than that specified in the Act ;
- (xii) Drawings or salaries of the proprietors or the partners ;
- (xiii) Private or personal expenses of the assessee ;
- (xiv) Any expenditure of any kind which is not incurred solely for the purpose of earning the profits ;

If you have included any such sums in your expenditure in your books, you must exclude them from the expenditure permissible for the purpose of arriving at your taxable profits.

(c) You are also required to attach a statement showing the sums charged in your accounts under the provisions of section 58K(2).

Note 6.—The income, profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of such profession or vocation, provided that no allowance is made on account of any of your personal expenses. Professional fees received by you in any part of India (whether within British India or not) must be included by you in your receipts.

Note 7.—Income-tax chargeable on the profits of companies is paid by the companies, so that the dividends received by shareholders represent the net amount remaining after any income-tax due by the company has been paid. This amount should be entered in column

2 of the statement. The proportionate tax will be added in the Income-tax Office.

If the rate of tax applicable to your total income is less than the rate of tax applicable to the profits or gains of the company at the time of the declaration of such dividends, you may, by attaching the company's certificate received with the dividends, have the excess collected on your dividends from the company set against the tax payable by you on your other income instead of having to apply separately for a refund.

Note 8.—Agricultural income from land not paying land revenue or local rates to an authority in British India should be included under this head or under income from business according to circumstances.

Note 9.—Deductions from total income can only be made for insurance premia in respect of insurance on your own life or on the life of your wife, or in respect of a contract for a deferred annuity on your own life or on the life of your wife. No deduction is permissible in the case of any other form of insurance except in the case of Hindu undivided families where deductions are permissible on account of premia paid in respect of insurance on the life of any male member of the family or of his wife. The original receipt or the certificate of the insurance company to which the premium was paid must be attached to the return.

20. The Notice of Demand under section 29 shall be in the following form :—

**NOTICE OF DEMAND UNDER SECTION 29 OF
THE INCOME-TAX ACT, 1922.**

To

1. You have been assessed for the year to income-tax amounting to Rs. [in addition to which a penalty of Rs. has been imposed], as shown in the copy of the assessment form sent herewith.

2. You have also been assessed to super-tax amounting to Rs.

3. You are required to pay the amount of Rs. on or before the to at when you will be granted a receipt.

4. If you do not pay the tax on or before the date specified above, you will be liable to a penalty which may be as great as the tax due from you.

5. If you are dissatisfied with your assessment you may present an appeal under sub-section (1) of section 30 of the Indian Income-tax Act, 1922, to the Assistant Commissioner of Income-tax at within 30 days from the receipt of this notice, on a petition duly stamped in the form

prescribed under sub-section (3) of section 30 and verified as laid down in that form.

Or

The assessment has been made under sub-section (4) of section 23 of the Indian Income-tax Act, 1922, because you to make a return of your income under section 22 failed to comply with a notice under sub-section (4) of section 22, to comply with a notice under sub-section (2) of section 23 and no appeal lies. But if you were prevented by sufficient cause from making the return or did not receive the notice(s) aforesaid, or had not a reasonable opportunity to comply, or were prevented by sufficient cause from complying with the terms of the notice(s), you may apply to me within one month from the receipt of this notice under section 27, to cancel the assessment and proceed to make a fresh assessment.

6. The appropriate challan should be sent along with the amount paid. Should you lose the challans attached to this notice of demand, it will be necessary for you to apply to the Income-tax Officer for copies of fresh challans.

Dated

19 .

Income-tax Officer.

Place

NOTE.—The superfluous words in paragraph 5 should be deleted.

ASSESSMENT FORM.

ASSESSMENT FOR 193 -193 UNDER SECTION
ACT XI OF 1922.

District or Area.

Name of assessee

Number in General Index

Address

Number of miscellaneous record

Serial No.	Detailed sources of income.	Amount of income	Tax deducted at source.		Remarks.
		Rs.	Rs.	A.	
1	Salary (including employee's provident fund contributions) ...				
1A	Annual accretion (less employee's provident fund contribution) under section 58A(f) ...				
2	Interest on securities ...				
3	Property ...				
4	Business ...				
5	Profession ...				
6	Other sources...				
			Rs.	A.	Rs. A.
(i) Total income ...					
(ii) Deduction under section 7(i) or on account of provident fund, to which the Provident Fund Act, 1897, applies ...					
(iii) Deduction on account of recognised provident fund—					
(a) Contributions ...					
(b) Exempted interest ...					
(iv) Deduction on account of insurance premia ...					
(v) Deduct sums received as dividends or from a firm the profits of which have been charged to income-tax ...					
(vi) Deduct amount of interest from tax-free securities of the Government of India or of a local Government ...					
(vii) Income now to be subjected to income-tax ...					
(viii) Rate applicable.....pies per rupee ...					
(ix) Amount of income-tax ...					

	Rs.	A.	Rs.	A.
(x) Deduction under section 17		
(xi) Amount of deductions at source from salary or interest on securities for which credit is given under section 18(5)		
(xii) Abatement on account of dividends (at.....pies per rupee)		
(xiii) Abatement on account of income from a registered firm (at.....pies per rupee)		
(xiv) Net amount of income-tax (or refund)		
(xv) Amount of super-tax		
(xvi) Penalty under section 28 or section 25(2)		
(xvii) Total sum payable (or to be refunded) — (in figures as well as in words)		
Rupees.....				
Annas.....				

Dated

193 .

Income-tax Officer.

Classification of demand.

Serial No.	Classification.	Amount of tax.
		Rs. A.
1	Salaries—	
	(a) Paid by Government	...
	(b) „ a local authority	...
	(c) „ companies, other bodies and associations	...
	(d) „ private employers	...
2	*Interest on securities—	...
	(a) on securities of Government of India	...
	(b) „ „ local Governments	...
	(c) on debentures and other securities of a local authority or company	...
3	Income derived from property	...
4	„ „ „ business	...
5	Professional earnings	...
6	Income derived from other sources	...
	TOTAL	...
	Deduction on account of section 7(i), 15 or 58F	...
	Deduction on account of section 17	...
	Total of refunds and rebates as in the classification cage below	...
	Penalty under section 25(2)	...
	„ „ „ 28	...
	Net demand (or refund)	...

*Where the result of an assessment is an abatement, the sum allowed as a refund or rebate should be entered in the classification cage below.

**Classification of refunds and rebates.*

Source of income.	Rate of refund or rebate.	Amount of refund or rebate.
		Rs. A.

*Items (xii) and (xiii) on pre-page and abatement regarding securities.

Record of cash refunds.

Date of issue of notice of demand.					
	Number of voucher ...				
	Date of voucher ...				
	Amount of refund ...				
	Reason for refund ...				

†Return.

†Accounts.

N = Not submitted.

N = Not submitted.

A = Submitted and accepted.

A = Submitted and accepted

R = Submitted, but assessment not based on it.

R = Submitted, but assessment not based on them.

†NOTE.—For the purpose of compiling Annual Return No. VIII, I. T. Os. should invariably strike out the inapplicable entries.

21. An appeal under section 30 shall in the case of an appeal against a refusal of an Income-tax Officer to make a fresh assessment under section 27, be in Form A; in the case of an appeal against an order of an Income-tax Officer under section 25(2) in Form C; in the case of an appeal against an order of an Income-tax Officer under section 28 in Form D, in the case of an appeal against a refusal of an Income-tax Officer to register a Firm under section 26-A, in Form D-1 and in other cases in Form B.

Notification dated the 23rd December, 1933.

FORM A.

Form of appeal against an order refusing to reopen an assessment under section 27.

To

The Assistant Commissioner of

The day of 19

The petition of _____ of _____ post office,
District sheweth as follows :—

1. Under the Indian Income-tax Act, 1922, your petitioner has been assessed on the sum of Rs. _____ for the year commencing the 1st day of April 19__.

2. Your petitioner was prevented by sufficient cause from making the return required by section 22 or did not receive the notice issued under sub-section (1) of section 22, or sub-section (2) of section 23, or had not a reasonable opportunity to comply or was prevented by sufficient cause from complying with the terms of the notice under sub-section (1) of section 22 or sub-section (2) of section 23, as more particularly specified in the statement attached.

3. Your petitioner therefore presented a petition to the Income-tax Officer under section 27, requesting him to cancel the assessment. This petition, the Income-tax Officer, by his order dated _____ of which a copy is attached, has rejected.

4. Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and that he may be directed to make a fresh assessment in accordance with the law.

Signed.

STATEMENT OF FACTS.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein and in the above statement of facts is true to the best of my information and belief.

Signed.

District, sheweth as follows :—

1. Under section 28 of the Indian Income-tax Act, 1922, a penalty of Rs. _____ has been imposed on your petitioner by the Income-tax Officer/Assistant Commissioner. The notice of demand attached hereto was served upon him on _____.

2. Your petitioner did not conceal the particulars of his income or deliberately furnish inaccurate particulars thereof but as will be seen from the statement of facts attached returned it at its real amount to the best of his knowledge and belief.

3. Your petitioner therefore requests that the order of the Income-tax Officer/Assistant Commissioner imposing a penalty of Rs. _____ upon your petitioner may be set aside.

Signed

STATEMENT OF FACTS.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed

FORM D-1.

Form of appeal against an order refusing to register a firm under section 26-A.

To

The Assistant Commissioner of

The _____ day of _____ 19

The petition of _____ of _____ post office,
District sheweth as follows :—

Under section 26-A of the Indian Income-tax Act, 1922, your petitioner applied to the Income-tax Officer.....
for the registration of the firm.....
By his order dated the _____
a copy of which is herewith attached, the Income-tax Officer has refused to register the said firm.

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and that he may be directed to register the firm.

Signed.

Grounds of appeal.

Form of verification.

I, _____, the petitioner, named in the above petition do hereby declare that what is stated therein is true to the best of my information and belief.

Signed.

21-A. An appeal under section 50-A shall be in the following form :—

Form of appeal against an order refusing to grant a refund under Section 48, 48-A or 49.

To

The Assistant Commissioner of

The _____ day of _____ 19 _____ .

The petition of _____ of

post office, _____ District sheweth as follows :—

Your petitioner applied to the Income-tax Officer for a refund under section 48/48-A/49 of the Indian Income-tax Act, 1922, of Rs. _____ . The Income-tax Officer

has by his order dated the _____ of which a copy is attached rejected the application.
granted a refund of only Rs. _____

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and the refund asked for may be granted.

Signed.

Grounds of appeal.

Form of verification.

I, _____, the petitioner named in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed.

22. An appeal under section 32 (2) shall in the case of an appeal against an order of an Assistant Commissioner under section 28 be in Form D attached to Rule 21 and in other cases in Form E.

FORM E.

To

The Commissioner of Income-tax,

The day of 19 .

The petition of sheweth as follows :—

1. Under section 31 (3) of the Indian Income-tax Act, 1922, the Assistant Commissioner of has increased the tax payable by your petitioner from Rs. to Rs. .

2. Your petitioner prays that the enhancement may be set aside or reduced to Rs. for the reasons stated below :

Signed

GROUNDS OF APPEAL.

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed

22A An appeal to the Commissioner for a reference to a Board of Referees shall, in cases falling under sub-section (1) of section 23A, be in Form F, and, in cases falling under sub-section (2) of section 23A, be in Form G.

FORM F.

To

The Commissioner of Income-tax,

The day of 19 .

The petition of sheweth as follows :—

1. The Income-tax Officer of , with the previous approval of the Assistant Commissioner of has passed an order dated of which a copy is attached under sub-section (1) of section 23A of the Indian Income-tax Act, 1922, that the sum payable as income-tax by the ^{firm}_{association} known as shall not be determined and that the share of your petitioner in the profits and gains of the said ^{firm}_{association} shall be included in his total income for the purpose of assessment ; and a notice of the said order has been served upon your petitioner on the day of .

2. Your petitioner, being aggrieved, for the reasons stated below, by the order of the Income-tax Officer, prays that the said order may be set aside.

Signed

GROUND S OF APPEAL

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed

FORM G.

To

The Commissioner of Income-tax,

The _____ day of _____ 19 .

The petition of _____ sheweth as follows :—

1. The Income-tax Officer of _____ with the previous approval of the Assistant Commissioner of _____ has passed an order dated _____

of which a copy is attached under sub-section (2) of section 23A of the Indian Income-tax Act, 1922, that the sum payable as income-tax by the company known as the _____ shall not be determined and that the proportionate share of your petitioner in the profits and gains of the said company shall be included in his total income for the purpose of assessment; and a notice of the said order has been served upon your petitioner on the _____ day of _____ .

2. Your petitioner, being aggrieved, for the reasons set out below, by the order of the Income-tax Officer, prays that the said order may be set aside.

Signed

GROUND S OF APPEAL.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed

23. (1) In the case of income derived in part from agriculture and in part from business an assessee shall be entitled to deduct from such income the market value of any agricultural produce raised by him or received by him as rent in kind which he has utilized as raw material for the purposes of his business or the sale receipts of which are included in the accounts of his business. The balance of such income shall be deemed to be income derived from the business and no further deduction shall be made therefrom in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent in kind.

(2) For the purposes of sub-rule (1) "market value" shall be deemed to be :—

(a) where agricultural produce is ordinarily sold in the market in its raw state, or after application to it of any process ordinarily employed by a cultivator or receiver of rent in kind to render it fit to be taken to market, the value calculated according to the average price at which it has been so sold during the year previous to that in which the assessment is made.

(b) where agricultural produce is not ordinarily sold in the market in its raw state, the aggregate of—

(1) the expenses of cultivation ;

(2) the land revenue or rent paid for the area in which it was grown ; and

(3) such amount as the Income-tax Officer finds, having regard to all the circumstances in each case, to represent a reasonable date of profit on the sale of the produce in question as agricultural produce.

24. Income derived from the sale of tea grown and manufactured by the seller in British India shall be computed as if it were income derived from business and 40 per cent of such income shall be deemed to be income, profits and gains liable to tax.

Provided that in computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, unless such area has previously been abandoned.

25. In the case of Life Assurance Companies incorporated in British India whose profits are periodically ascertained by actuarial valuation, the income, profits and gains of the Life Assurance Business shall be the average annual net profits

disclosed by the last preceding valuation, provided that any deductions made from the gross income in arriving at the actuarial valuation which are not admissible for the purpose of income-tax assessment, and any Indian income-tax deducted from or paid on income derived from investments before such income is received, shall be added to the net profits disclosed by the valuation.

26. Rule 25 shall apply also to the determination of the income, profits and gains derived from the annuity and capital redemption business of life assurance companies, the profits of which can be ascertained from the results of an actuarial valuation.

27. If the Indian income-tax deducted from interest on the investments of a company exceeds the tax on the income profits and gains thus calculated, a refund may be permitted of the amount by which the deduction from interest on investments exceeds the tax payable on such income, profits and gains.

28. In the case of other classes of insurance business (fire, marine, motor car, burglary, etc.) of a company incorporated in British India, the income, profits or gains shall be determined in accordance with the provisions of the Act, subject to the allowance specified in the rule next following.

29. If in the ordinary accounts of any insurance business other than Life Assurance, Annuity, or Capital Redemption Business carried on by an Insurance Company any amount is actually charged against the receipts for the sole purpose of forming a reserve to meet outstanding liabilities or unexpired risk in respect of policies which have been issued (including risk of exceptional losses) and is not used for any other purpose such amount may be treated as expenditure incurred solely for the purpose of earning the profits of the business.

30. Any amount either written-off in the accounts or through the Actuarial Valuation Balance Sheet to meet depreciation of, or loss on, securities or other assets, or which is carried to a reserve fund formed for that sole purpose and not used for any other purpose, may be treated as expenditure incurred solely for the purpose of earning the profits of the business. Any sums taken credit for in the accounts or Actuarial Valuation Balance Sheet on account of appreciation of, or gains on the securities or other assets shall be deemed to be income chargeable to tax, subject always to deduction of such portion thereof as has been otherwise taken into account in calculating the income, profits or gains.

31. The income, profits and gains of companies carrying on Dividing Society or Assessment business shall be taken at 15 per cent. of the premium income in the previous year and, in the case of non-resident companies, at 15 per cent. of the Indian premium income in the previous year.

32. Notwithstanding anything contained in rules 25 to 31, the total income, however, of an insurance company carrying on more than one class of business shall be determined by its aggregate income from all classes of businesses.

33. In any case in which the Income-tax Officer is of opinion that the actual amount of the income, profits or gains accruing or arising to any person residing out of British India whether directly or indirectly through or from any business connection in British India cannot be ascertained, the amount of such income, profits or gains for the purposes of assessment to income-tax may be calculated on such percentage of the turnover so accruing or arising as the Income-tax Officer may consider to be reasonable, or on an amount which bears the same proportion to the total profits of the business of such person (such profits being computed in accordance with the provisions of the Indian Income-tax Act) as the receipts so accruing or arising bear to the total receipts of the business, or in such other manner as the Income-tax Officer may deem suitable.

34. The profits derived from any business carried on in the manner referred to in section 42(2) of the Act may be determined for the purposes of assessment to income-tax according to the preceding rule.

35. The total income of the Indian branches of non-resident insurance companies (Life, Marine, Fire, Accident, Burglary, Fidelity Guarantee, etc.), in the absence of more reliable data, may be deemed to be the proportion of the total income, profits or gains, of the companies, corresponding to the proportion which their Indian premium income bears to their total premium income. For the purpose of this rule, the total income, profits or gains of non-resident Life Assurance Companies whose profits are periodically ascertained by actuarial valuation shall be computed in the same manner as is prescribed in rule 25 for the computation of income, profits and gains of Life Assurance Companies incorporated in British India.

36. In the case of a person resident in British India, an application for a refund of income-tax under section 48 of the Act shall be made in the following form :—

Application for refund of income-tax.

I, _____, of _____,
do hereby state that my total income computed in accordance with section 16 of the Indian Income-tax Act, XI of 1922, accruing or arising or received in British India, or deemed under the Act to accrue or arise or to be received in British India, during the year ending on the 31st March 19____, amounted to Rs. _____ only.

I therefore pray for a refund of

Rs. _____	under "Salaries".
Rs. _____	under "Securities".
Rs. _____	under "Dividends from companies".
Rs. _____	under "Share of profits of the registered firm" known as _____ of which I am a partner.

Signature

I hereby declare that I am resident in British India, and that what is stated in this application is correct.

Dated

19 ____

Signature

36A. In the case of a person not resident in British India, an application for a refund of income-tax under section 48 of the Act shall be made in the following form :—

Application for refund of income-tax.

I, _____ of _____ (country) residing at _____ in _____ do hereby state that my total income computed in accordance with section 48(4) of the Indian Income-tax Act, 1922, during the year ending on the 31st March 19____, amounted to Rs. _____ only, as per return enclosed.

I therefore pray for a refund of

Rs. _____	under "Salaries".
Rs. _____	under "Securities".
Rs. _____	under "Dividends from companies".
Rs. _____	under "Share of profits of the registered firm" known as _____ of which I am a partner.

Signature

I hereby declare that I am a British subject. (See note 2.)
subject of State being a State in India.
 I also declare that what is stated in this application is correct.
Dated 19 .

Signature

Sworn before me (Name)

Designation *Signature* at on

Seal.

37. The application under rule 36 shall be accompanied by a return of total income in the form prescribed under section 22 unless the applicant has already made such a return to the Income-tax Officer.

37A. The application under Rule 36A shall be accompanied by a return of total income in the following form the details of Part I of which but not the total may be omitted if the person has already submitted a return under section 22(2) for the same year :—

NOTE 1.—The above declaration shall be sworn (a) before a Justice of the Peace, a Notary Public or Commissioner of Oaths if the applicant for refund resides in any part of His Majesty's Dominions outside British India, (b) before a Magistrate or other official of the State or a Political Officer if he resides in a State in India, (c) before a British Consul if he resides elsewhere.

NOTE 2.—“British subject” means a person who is a natural-born British subject, or a person to whom a certificate of naturalization has been granted.

Statement of total income accruing or arising or received in British India, or deemed under the Act to accrue or arise to be received in British India, during the previous year.

1 Sources of income.	2 Amount of profits or gains or income during the previous year.	3 Tax already charged on the income.
	Rs A.	Rs. A.
1. Salaries (including wages, annuity, pension, gratuity, fees, commission, allowances, perquisites, including rent free quarters) or profits received in lieu of, or in addition to, salary or wages ...[See note (1)]		
1A. The contributions made by an employer to the account in a recognised provident fund of the person making the return ...		
1B. The interest accruing to the account mentioned in 1A which is not exempt from income-tax [Section 58F(2)] ...		
2. Interest on securities (including debentures) already taxed ... „ (2)		
3. Interest on securities of the Government of India or of local Governments declared to be income-tax free ... „ (3)		

1 Sources of income.	2 Amount of profits of gains or income during the previous year.	3 Tax already charged on the income.
	Rs A.	Rs. A.
4. Property as shown in detail in Schedule A „ (4)		
5. Business, trade, com- merce, manufacture, or dealings in proper- ty, shares or securi- ties (details as in note 5) „ (5)		
6. Profession „ (6)		
7. Dividends from com- panies „ (7)		
8. Interest on mortgages, loans, fixed deposits, current accounts, etc., not being in- come from business		
9. Ground rent „		
10. Any source other than those mentioned abo- ve including any in- come earned in partnership with others „ (8)		
Total ...		
Deductions claimed—		
(a) on account of insurance premia		
(b) on account of contributions to a provident fund to which the Provident Funds Act applies		
(c) on account of contributions to a recognised provident fund [Section 58A (a)]		
(d) others „ „		

Statement of total income, profits and gains in the previous year, arising, accruing or received out of British India, which, if arising, accruing or received in British India, would be included in the computation of total income under section 16.

No. of country	Sources of income.	Amount of profits or gains or income during the previous year.
	1. Salaries ... (see Note 10)...	Rs.
	*	
	2. Securities ... (see Note 11)...	
	*	
	3. Property ... (see Note 12)...	
	*	
	4. Business ... (see Note 13)...	
	*	
	5. Profession ... (see Note 14)...	
	*	
	6. Dividends from companies ... (see Note 15)...	
	*	
	7. Interest on securities other than in item 2 above, mortgages, loans, fixed deposits, current accounts, etc., not being income from business ... (see Note 16)...	
	*	
	8. Ground rent ...	
	*	
	9. Any source other than those mentioned above including any income earned in partnership with others ... (see Note 17)...	
	Total ...	
	Total as per Part I ...	
	Total as per part II ...	
	Grand Total ...	

*The figures for each country should be separately shown.

Verification.

I declare that to the best of my knowledge and belief the information given in the above statement is correct and complete, that the amounts of income shown are truly stated and relate to the year ended _____ and that no other income accrued or arose or was received by me the firm during the said year and that I the firm have no other sources of income.

*Signature**Date*

N. B.—(a) Income accruing to you outside British India received in British India, should be entered in Part I and not in Part II.

(b) All income from whatever source derived must be entered in the form including income received by you as a partner of a firm.

(c) "Previous year" means the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up.

NOTE 1.—In column 2 should be shown the gross amount of salary and not the net amount after deductions on account of income-tax, provident funds, etc.

NOTE 2.—"Interest on securities" means the interest on promissory notes or bonds issued by the Government of India or a local Government, or the interest on debentures or other securities for money issued by or on behalf of a local authority or company. Where income-tax has been deducted from the interest, or where the interest has been paid income-tax free the amount of tax so deducted or paid should be added to the amount of interest actually received, and the gross amount so arrived at should be entered in column 2 of the statement. The term "interest on securities" does not include interest on fixed deposits or mortgages or other loans, which have to be shown under heading 8.

The interest on securities of the Government of India or of local Governments declared to be income-tax free should be shown under head 3. Those which are not declared to be income-tax free should be included under this head.

Entries under this head must be supported by the certificate issued by the person or company paying the interest under section 18(9) of the Act.

NOTE 3.—(a) The income tax payable on the interest receivable on a security of a local Government issued income-tax free is payable by the local Government and not by the holder of the security.

(b) Only the interest on securities of the Government of India or of a local Government declared to be income-tax free should be entered against this head. Such interest will not be charged to income-tax but it must be included in the statement of total income in order to ascertain the rate of income-tax chargeable on other income. *It is chargeable to super-tax.*

(c) Particulars of any interest on securities issued by other authorities and stated to be free of income-tax should be entered against head 2, as income-tax on such interest is actually paid by these authorities on behalf of the recipients.

NOTE 4.—The tax is payable under this head in respect of the *bonafide* annual value of any buildings or lands appurtenant thereto, of which you are the owner, other than such portions of such buildings and lands as you may occupy for the purpose of your business.

SCHEDULE A.

1 Serial number	
2 Name of village or town where the property is situated.	
3 Name of street and number of property.	
4 In the case of municipalities the name of the person in whose name the property stands in the municipal registers.	
5. Whether the property is occupied by owner or is let.	
6 Annual letting value of the property.	
6A Period during which the property remained vacant.	
7 Amount of rent actually received for the property if let.	
8 One-sixth of the annual letting value shown in column 6. 9 Premium paid to insure the property against damage or destruction. 10 Interest paid on a mortgage or charge on the property. 11 Ground rent paid for the property. 12 Land revenue paid for the property. 13 Collection charges paid. 13A Amount claimed on account of property remaining vacant. 14 Total of columns 8 to 13 and 13A.	Deductions.
15 Net amount to be carried over to the front of the form.	

NOTE 5.—(a) Where you keep your accounts on the mercantile accountancy or book profits system, you must file a return in the following form :—

Income, profits or gains from business, trade, commerce.

	Rs.	A.
Income, profits or gains as per Profit and Loss Account for the year ended 19 ..		
<i>Add</i> —Any amount debited in the accounts in respect of—		
1. Reserve for bad debts ...		
2. Sums carried to reserve for provident or other funds ...		
3. Expenditure of the nature of charity or presents ...		
4. Expenditure of the nature of capital ...		
5. Income-tax or Super-tax ...		
6. Drawings or salary of proprietor or partners ...		
7. Rental value of property owned and occupied ...		
8. Cost of additions to, or alterations, extensions, improvements of, any of the assets of the business ...		

Income, profits or gains from business, trade, commerce—contd.

	Rs.	A.
<i>Add</i> —Any amount debited in the accounts in respect of—		
9. Interest on the proprietor's or partner's capital, including interest on reserve or other funds ...		
10. Losses sustained in former years ...		
11. Losses recoverable under an insurance or contract of indemnity ...		
12. Depreciation of any of the assets of the business... ..		
13. Private or personal expenses and expenses not incurred solely for the purpose of earning the profits ...		
TOTAL ...		
<i>Deduct</i> —Any profits included in the account already charged to Indian income-tax and the interest on securities of the Government of India or of local Governments declared to be Income-tax free. ...		
BALANCE ...		

(Signature of the person making the return.)

Dated

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(b) Where you do not keep your accounts in such a form, you must file a statement showing how you arrive at the taxable profits, *i. e.*, showing details of the gross receipts and of the expenditure you propose to set against those receipts. No deductions are permissible on account of—

- (i) Property owned and occupied by the owner of a business for the purposes of a business ;
- (ii) Additions to, or alterations extensions, or improvements of, any of the assets of the business ;
- (iii) Interest on the capital of the proprietors or partners of the business ;
- (iv) Bad debts not actually written off in the accounts ;
- (v) Losses sustained in previous years ;
- (vi) Reserves of any kind ;
- (vii) Sums paid on account of the income-tax or super-tax or any tax levied by a local authority other than local rates or municipal taxes in respect of the portion of the premises used for the purpose of the business ;
- (viii) Any expenditure of the nature of charity or a present ;
- (ix) Any expenditure of the nature of capital ;
- (x) Any loss recoverable under an insurance or a contract of indemnity ;
- (xi) Depreciation of any kind other than that specified in the Act ;
- (xii) Drawings or salaries of the proprietors or the partners ;
- (xiii) Private or personal expenses of the assessee ;
- (xiv) Any expenditure of any kind which is not incurred solely for the purpose of earning the profits.

If you have included any such sums in your expenditure in your books, you must exclude them from the expenditure permissible for the purpose of arriving at your taxable profits.

(c) You are also required to attach a statement showing the sums charged in your accounts under the provisions of section 58K (2).

NOTE 6—The income, profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred *solely* for the purpose of such profession or vocation, provided that no allowance is made on account of any of your personal expenses. Professional fees received by you in any part of India (whether within British India or not) must be included by you in your receipts.

NOTE 7.—Income-tax chargeable on the profits of companies is paid by the companies, so that the dividends received by shareholders represent the net amount remaining after any income-tax due by the company has been paid. This amount should be entered in column 2 of the statement. The proportionate tax will be added in the Income-tax office.

If the rate of tax applicable to your total income is less than the rate of income-tax applicable to the profits or gains of the company at the time of the declaration of such dividends, you may, by attaching the company's certificate received with the dividends, have the

excess collected on your dividends from the company set against the tax payable by you on your other income instead of having to apply separately for a refund.

Where a company derives a part of its profits in British India and part outside British India such portion of its dividend as is payable out of profits taxable in British India should be shown in Part I under item 7 and the balance in Part II under item 6.

NOTE 8.—Agricultural income from land not paying land revenue or local rates to an authority in British India should be included under this head or under income from business according to circumstances.

NOTE 9.—Deductions from total income can only be made for insurance premia in respect of insurance on your own life or on the life of your wife, or in respect of a contract for a deferred annuity on your own life or on the life of your wife. No deduction is permissible in the case of any other form of insurance except in the case of Hindu undivided families where deductions are permissible on account of premia paid in respect of insurance on the life of any male member of the family or of his wife. The original receipt or the certificate of the insurance company to which the premium was paid must be attached to the return.

NOTE 10.—The gross amount of salary and not the net amount after deductions on account of income-tax, provident fund, etc., should be shown.

NOTE 11.—Under this head should be shown interest on securities issued by the Government of India or a local Government or a local authority in India on which interest is paid or payable outside British India, and the interest on debentures on companies operating in India or payable outside British India. For this purpose "Company" means "a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of the Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession, and includes any foreign association carrying on business in British India whether incorporated or not and whether its principal place of business is situate in British India or not, which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act." Interest on all other securities should be shown under item 7—see Note 16. Interest should be shown gross if foreign tax is deducted therefrom after the assessee receives the interest; if the tax is deducted at source, the net interest received should be shown.

NOTE 12.—See instructions in Note 4.

NOTE 13.—The details should be given as explained in Note 5, but there will be no "deduct" entry on account of profits included in the amount already charged to Indian income-tax and the interest on securities of the Government of India or a local Government in India declared to be income-tax free.

NOTE 14.—This should show professional fees received outside British India.

NOTE 15.—The figure to be shown here is the amount actually received by the shareholder irrespective of whether the dividends are declared free of tax or not.

Where a company derives a part of its profits in British India and part outside British India, such portion of its dividend as is payable out of profits taxable in British India should be shown in Part I under item 7 and the balance in part II under item 6.

NOTE 16.—This head will include *inter alia* interest on all securities other than those entered in item 2, see Note II. Interest should be shown gross if foreign tax is deducted therefrom after the assessee receives the interest; if the tax is deducted at source, the net interest received should be shown.

NOTE 17.—Agricultural income from land not included in Part I should be shown under this head.

38. Where the application under rule 36 or rule 36A is made in respect of interest on securities or dividends from companies, the application shall be accompanied by the certificate prescribed under section 18(9) or section 20, as the case may be.

39. The application under rule 36 or rule 36A shall be made as follows :—

(a) If the applicant is resident in British India, to the Income-tax Officer of the District in which the applicant is chargeable directly to income-tax, or if he is not chargeable directly to income-tax to the Income-tax Officer of the district in which he ordinarily resides;

(b) If the applicant is resident outside British India, to the Income tax Officer appointed by the Central Board of Revenue.

40. An application for refund of income-tax under section 49 of the Act shall be made in the following form :—

Application for relief from double income-tax under section 49 of the Indian Income-tax Act, 1922.

I, _____ of _____, do hereby state that I have paid United Kingdom income-tax and super-tax amounting to £ _____ for the year ending 19 _____ on an income of £ _____ and that Indian $\frac{\text{income-tax}}{\text{income-tax and super-tax}}$ of Rs. _____

has also been paid on _____ the same income _____ income-tax from the same source amounting to Rs. _____ I have obtained relief under the provisions of

section 27 of the English Finance Act, 1920, at the rate of _____ Taxes see attached certificate from the Inspector of of _____ I now pray for a further relief at the rate of _____ amounting to Rs. _____ under section 49 of the Indian Income-tax Act, 1922, to which I am entitled. My income from all sources to which this Act applies

during the 'previous year' ending on the
19 amounted to Rs.

only—see Return of income attached
already submitted

Signature

I hereby declare that what is stated herein is correct.

Signature

Dated

19.

41. The application under rule 36 or rule 40 may be presented by the applicant in person or through a duly authorised agent or may be sent by post.

42. A return shall be furnished by the principal officer of a Company under section 19A in respect of a dividend or aggregate dividends if the amount thereof exceeds Rs. 10,000.

42-A. A return shall be furnished by the person responsible for paying interest, not being interest on Securities in respect of amounts of interest or aggregate interest exceeding Rs 1000.

43. The return by the principal officer of a Company under section 19A shall be in the following form and shall be delivered to the Income-tax Officer who assesses the Company :—

Return under section 19-A of the Indian Income-tax Act, 1922,
for the year 1st April 19 -31st March 19 .

Name of Company

Address of Company

(1) Resident shareholders/Non-Resident Shareholders.

Serial number.	Name of shareholder.	Address of shareholder.	Date of declaration of dividends.	(2) Amount of dividends.	
				Net.	Gross.
				Rs.	Rs.
1	2	3	4	5	6

I, _____, the principal officer of the
 Company, hereby certify that the above statement con-
 tains a complete list of the resident/Non-resident sharehol-
 ders of the company to whom a dividend or aggregate
 dividends exceeding Rs. 5,000 was or were distributed in
 the period from the 1st April 19 _____ to the 31st March 19 _____.
Dated _____ 19 _____

Signature

Note 1.—Separate forms should be used for resident and non-
 resident shareholders.

Note 2.—Where dividends are issued “free of income-tax”, the
 figure to be entered in column 5 is the sum actually paid, and the
 figure to be entered in column 6 is the aggregate of the sum so paid
 and the amount of income-tax payable by the Company in respect
 of the dividends.

43-A. The return under section 20-A shall be in the follow-
 ing form and shall be delivered to the Income-tax Officer
 in whose jurisdiction the person responsible for paying in-
 terest resides :—

*Return under section 20-A of the Indian Income-tax Act, 1922,
 for the year 1st April 19 _____ to 31st March 19 _____*

Name of payer.

Address of payer.

Serial No.	Name of payee.	Address of payee.	Date of payment.	Amount of interest or aggre- gate interest.

I hereby certify that the above statement contains a
 complete list of persons to whom interest or aggregate in-

terest exceeding Rs. 1,000 was paid during the period 1st April 19 to 31st March 19 .

Signature

44. All sums deducted in accordance with sub-sections (2) and (3) of section 57 shall be paid by the person making the deduction to the credit of the Government of India within one week from the date of such deduction by remitting the amount to the Income-tax Officer concerned or to such Government Treasury or branch of the Imperial Bank of India as he may direct. The person making the deduction shall send at the same time to the Income-tax Officer a statement showing the name of the non-resident person on whose behalf the tax has been deducted, the amount of the tax deducted, the gross amount of dividend in respect of which the deduction has been made and the period for which the dividend has been paid.

FINANCE DEPARTMENT (CENTRAL REVENUES.)

Notification No. 9, dated the 15th March, 1930.

In exercise of the powers conferred by Chapter IXA of the Indian Income-tax Act, 1922 (XI of 1922), the Governor General in Council is pleased to make the following rules, the same having been previously published as required by sub-section (1) of section 58L read with sub-section (4) of section 59 of the said Act :—

1. These rules may be called the Indian Income-tax (Provident Funds Relief) Rules.

2. In these rules, "section" means a section of the Indian Income-tax Act, 1922 (XI of 1922).

3. The contributions made by employees after the date of recognition of a provident fund and the interest on the accumulated balances of such contributions shall be wholly invested in securities of the nature specified in clause (a), (b), (c), (d) or (e) of section 20 of the Indian Trusts Act, 1882 and payable both in respect of capital and of interest in British India.

4. (1) Withdrawals by employees shall not be allowed by the trustees except on special grounds in the following circumstances or circumstances of a similar nature—

(a) to pay expenses incurred in connection with the illness of a subscriber or a member of his family ;

- (b) to pay for the passage over the sea of a subscriber or any member of his family.
- (c) to pay expenses in connection with marriages, funerals or ceremonies which by the religion of the subscriber it is incumbent upon him to perform and in connection with which it is obligatory that expenditure should be incurred.
- (d) to meet the expenditure on building or purchasing a house or a site for a house provided that such house or site is assigned to the trustees of the fund :
- (e) to pay premia on policies of insurance on the life of the subscriber or of his wife provided that the policy is assigned to the trustees of the fund and that the receipts granted by the insurance company for the premia are from time to time handed over to the trustees for inspection by the Income-tax Officer,

(2) For the purposes of sub-rule (1) "Family" means any of the following persons who reside with and are wholly dependent on the employee, namely :—the employee's wife legitimate children, step children, parents, sisters and minor brothers.

(3) No such withdrawal shall exceed (1) the pay of the employee for three months, or, in the case of a withdrawal for the purpose specified in clause (d) of sub-rule (1), six months at the time when the advance is granted, or (2) the total of the accumulation of exempted contributions and exempted interest contained in the balance to the credit of the employee whichever is less.

(4) A second withdrawal shall not be permitted until the sum first withdrawn has been fully repaid.

5. (1) Where a withdrawal is allowed for a purpose specified in clause (d) or clause (e) of sub-rule (1) of rule 4 the amount withdrawn need not be repaid.

(2) Where a withdrawal is allowed for any other purpose the amount withdrawn shall be repaid in not more than twenty-four equal monthly instalments and shall bear interest in accordance with rule 6 and no further withdrawal shall be permitted until repayment has been effected in full.

6. In respect of withdrawals which are repaid in not more than 12 monthly instalments, an additional instalment of 4 per cent. of the amount withdrawn shall be paid on account of interest ; and in respect of withdrawals which are repaid in more than 12 monthly instalments two such instal-

ments of 4 per cent. of the amount withdrawn shall be paid on account of interest :

Provided, however, that at the discretion of the Trustees of the Fund, interest may be recovered on the amount withdrawn or the balance thereof outstanding from time to time at 1 per cent. above the rate which is payable for the time being on the balance in the fund at the credit of the member.

7. The employer shall deduct such instalments from the employee's salary, and pay them to the Trustees. The deductions shall commence from the second monthly payment made after the withdrawal or in the case of an employee on leave without pay from the second monthly payment made after his return to duty.

8. In case of default of repayment of instalments under rules 6 and 7 the Commissioner of Income-tax may at his discretion order that the amount of the withdrawal or the amount outstanding shall be added to the total income of the employee for the year in which the default occurs and the Income-tax Officer shall assess the employee accordingly.

9. Notwithstanding anything contained in rules 4 to 8, it shall be open to the trustees of a recognised provident fund to permit the withdrawal of ninety per cent. of the amount standing at the credit of an employee if the employee takes leave preparatory to retirement, provided that if he rejoins duty on the expiry of his leave he shall refund the amount drawn together with interest at the rate allowed by the fund.

9A. Where the accounts of a recognised provident fund are kept outside British India, certified copies of the accounts shall be supplied not later than the 15th June in each year to a local representative of the employer in British India :

Provided that the Income-tax Officer may in any year appoint a date later than the 15th June as the date by which the certified copies shall be supplied.

10. (1) An application for recognition shall be made by the employer maintaining the fund for which recognition is sought and shall be accompanied by the following documents :—

(a) the trust deed if any in original with one copy thereof, the latter to be retained by the Commissioner, and

(b) the rules of the fund :

Provided that if the original of the trust deed cannot conveniently be produced, it shall be open to the Commissioner of Income-tax to accept in lieu of the original a copy certified either by a Magistrate or in any manner specified in rule 7 of

the Indian Companies Rules, 1914, in which case an additional copy shall be furnished for retention by the Commissioner.

(2) The application shall be submitted through the Income-tax Officer of the area in which the accounts of the funds are kept, or, if the accounts are kept outside India, through the Income-tax Officer of the area in which the local headquarters of the employer are situate.

(3) The application shall contain the following information :—

- (a) Name of employer and address, his business, profession, etc., also his principal place of business.
- (b) Number of employees subscribing to the fund—
 - (i) in British India ;
 - (ii) in Indian States ;
 - (iii) outside India.
- (c) Place where the accounts of the fund are or will be maintained.
- (d) If the fund is already in existence—
 - (i) a copy of the last balance sheet of the fund, where such is maintained,
 - (ii) details of investments of the fund.

(4) A verification in the following form shall be annexed to the application.

Form of Verification.

We ^{the}_I the trustee(s) of the above named fund do declare that what is stated in the above application is true to the best of our information and belief, and that the documents sent herewith are the originals or true copies thereof.

11. Where an employee of a company owns shares in the company with a voting power exceeding ten per cent. of the whole of such power the sum of the exempted contributions of the employee and employer to the recognised provident fund maintained by the company shall not exceed Rs. 250 in any month,

12. If an employee assigns, or creates a charge upon his beneficial interest in a recognised provident fund, the Income-tax Officer shall, on the fact of the assignment or charge coming to his knowledge, give notice to the employee that if he does not secure the cancellation of the assignment or charge within two months of the date of receipt of the notice the consideration received for such assignment or charge shall be deemed to be income received by him in the year in which the

fact became known to the Income-tax Officer and shall be assessed accordingly.

13. If the Commissioner withdraws recognition from a recognised provident fund, the balance to the credit of each employee at the end of the financial year prior to the date of the withdrawal of recognition shall be paid to him free of income-tax and super-tax at the time when such employee receives the accumulated balance due to him. The remainder of the accumulated balance due to him shall be liable to income-tax and super-tax as if the fund had never been recognised.

14. Before withdrawing recognition, the Commissioner of Income-tax shall give an opportunity to the employer and the trustees of the fund to show cause why recognition should not be withdrawn.

FINANCE DEPARTMENT (CENTRAL REVENUES.)

Notification No. 10, dated the 15 March 1930.

In pursuance of sub-section (2) of section 58F of the Indian Income-tax Act, 1922 (XI of 1922), the Governor General in Council is pleased to fix six per cent. as the rate referred to in the said sub-section.

CENTRAL BOARD OF REVENUE.

Notification No. 12, dated the 15 March, 1930.

In exercise of the powers conferred by Chapter IX-A, and by section 59 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue is pleased to make the following rules, the same having been previously published as required by sub-section (1) of section 58L read with subsection (4) of section 59 of the said Act :—

1. These rules may be called the Indian Income-tax (Provident Funds Relief) (Central Board of Revenue) Rules.

2. In these rules "section" means a section of the Indian Income-tax Act, 1922 (XI of 1922).

3. An order according recognition to a provident fund shall take effect—

- (a) in cases where the application for recognition has been received by the Commissioner of Income-tax before the 31st May 1930—on 31st March 1930.
- (b) in other cases on the last day of the month in which the order is made, or, at the request of the employer, on the last day of any later month in the same financial year.

4. An appeal under sub-section (5) of section 58B shall be in the following form and shall be verified in the manner indicated therein :—

Form of appeal against non-recognition of a Provident Fund by a Commissioner of Income-tax.

To

The Central Board of Revenue.

The petition of _____ employer(s)
carrying on business, profession or _____ at _____
Your petitioner(s) applied to the Commissioner of Income-tax under section 58B of the Indian Income-tax Act, 1922, for the recognition of the provident fund maintained by them (him) for the benefit of their (his) employees. The Commissioner of Income-tax has refused recognition for the reasons stated in his order dated _____ of which a copy is attached.

For the reasons set out below your petitioner(s) submit(s) that the fund should be recognised; and pray(s) that the Central Board of Revenue may be pleased to accord recognition.

Grounds of appeal.

We
I _____ the petitioner(s) named
in the above petition do declare that what is stated therein
is true to the best of $\frac{\text{our}}{\text{my}}$ information and belief.

Signature

Address of Appellant.

Date

5. The accounts of a recognised provident fund shall be prepared at intervals of not more than twelve months.

6. An account shall be maintained for each subscriber to the fund in the following form :—

[illegible]

N.B.—The totals of columns 3 and 4, 5 and 6, 7 and 8 and 11 and 12 will be carried into the next year as the opening balance of Columns 3, 5, 7 and 11, respectively.

NON-REPAYABLE WITHDRAWALS ACCOUNT

	Amount.	
April
May
June
July
.....
.....
.....
March
Total

TEMPORARY WITHDRAWALS ACCOUNT.

	Advance		Repayment.		Interest.	
Balance brought forward						
April				
May				
June				
July				
.....				
.....				
.....				
.....				
March				
Balance carried over						

7. An abstract for the financial year or other applicable accounting period of the individual account of each employee participating in a recognised provident fund shall be furnished by the trustees to the Income-tax Officer of the area in which the employer conducts his business, profession or vocation, or to such other Income-tax Officer as the Commissioner may, in each case, direct, not later than the fifteenth day of June in each year. It shall be in the form prescribed in rule 6, but shall show only the totals of the various columns thereof for the financial year or other accounting period. It shall also give an account of any temporary withdrawals by the employee during the year and of the repayment thereof.

8. The account to be made under the provisions of sub-section (1) of section 58 J shall show in respect of each employee (i) the total salary paid to the employee during the period of his participation in the provident fund, (ii) the total contributions, (iii) the total interest which has accrued thereon, and (iv), so far as may be, the percentage of the employee's salary in accordance with which contributions have been made by the employer and employee.

CENTRAL BOARD OF REVENUE.

Notification No. 35, dated the 12th July 1930.

In exercise of the powers conferred by sub-section (7) of section 33A of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue makes the following rules:—

Rules.

(1) The Commissioner of Income-tax on receipt of an appeal under section 33A of the Indian Income-tax Act, 1922, shall, unless, in pursuance of the proviso to sub-section (3) of that section, the appeal is withdrawn, appoint a Board of Referees consisting of not less than three and not more than five members chosen by him, subject to the provisions of sub-section (6) of that section, from a panel constituted and maintained by the Central Board of Revenue.

(2) Appointments to, and resignations or removals from, the panel shall be published in the Gazette of India.

(3) The names of the members chosen by the Commissioner shall be Communicated to the appellant within one week of receipt of the appeal in the Commissioner's office or of the decision of the Commissioner under section 33, as the case may be.

(4) Within a period of 15 days from the receipt of the communication, the appellant may object, without giving any reasons, to the inclusion of any name or names in the Board,

and submit the names of not less than five members of the panel to whom he will not object.

(5) In the event of an objection to any name, the Commissioner shall substitute a fresh name therefor, but shall not be bound to accept a name submitted by the appellant, and shall communicate it forthwith to the appellant.

(6) The appellant may not subsequently object to the inclusion in the Board of any name submitted by himself.

(7) The appellant shall be allowed one further period of fifteen days in which to object to names not originally included by the Commissioner nor submitted by himself.

(8) If the appellant has twice objected to the constitution of the Board proposed by the Commissioner, the Central Board of Revenue shall settle the composition of the Board and the decision of the Central Board of Revenue shall be final.

(9) The time and place of the first meeting of the Board shall be fixed by the Commissioner after consulting the members. The time and place of subsequent meetings shall be fixed by the Board and announced to the appellant and the Commissioner.

(10) The members of the Board shall elect their own Chairman.

(11) The decision of the Board shall be the decision of the majority of members present. All the members present shall sign the report, and any member who differs from the others may record a dissenting minute. Should there be an equality of votes, the Chairman shall have a casting vote. No decision of the Board which is signed by less than half the members shall be valid. The proceedings of the Board shall not be invalidated merely by reason of the absence of a member or his failure to sign the report of the Board.

CENTRAL BOARD OF REVENUE.

Notification No. 24, Income-tax, dated the 7th May 1932.—

In exercise of the powers conferred by section 59 of the Indian Income-tax Act, 1922 (XI of 1922), read with paragraph I of Part I-A of Schedule II to the Indian Finance (Supplementary and Extending) Act, 1931, the Central Board of Revenue hereby makes the following rule, the same having been previously published as required by sub-section (4) of the said section, namely :—

Rule.

The notice of demand referred to in paragraph 1 of Part I-A of Schedule II to the Indian Finance (Supplementary and Extending) Act, 1931, shall be served in the following form :—

Notice of Demand under paragraph 1 of Part I-A of the Schedule to the Indian Finance (Supplementary and Extending) Act, 1931.

To

1. You have been summarily assessed for the year to income-tax amounting to Rs. shown in the copy of the assessment form sent herewith.

2. If you are dissatisfied with this assessment, you may apply to me within 30 days of the receipt of this notice for the cancellation or revision of the assessment. My orders on such application will be final, and will specify the time within which payment should then be made.

3. You may, however, also submit with such application a return of your income under section 22 (2) of the Indian Income-tax Act in the form attached for the purpose. If you do so, the demand now made will be cancelled and the assessment will be made under section 23 of the Act, and subject to section 30 of the Act, an appeal will lie to the Assistant Commissioner.

4. If you do not present such an application (with or without a return) within the time specified in paragraph 2, you must pay the amount of Rs. on or before the to the officer in charge of the Government Treasury or Sub-Treasury/the Agent, Imperial Bank of India, at For failure to do so, you will be liable to a penalty not exceeding the amount of tax.

5. Chalans to be presented with the amount at the time of payment are attached. Should you lose them, you should apply to the Income-tax Officer for fresh ones.

6. On payment you will be granted a receipt.

Income-tax Officer.

Circle.

Dated

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PART III

MISCELLANEOUS.

CHAPTER I.

Anomalies in the present Act.

In construing a fiscal Act, the Court is not justified in straining the language in order to hold a subject liable to tax. Where the section is clear, unambiguous and unequivocal, assessment is justified notwithstanding the hardship it may cause to the person assessed. Whenever the Legislature intends to make an assessment or a provision, the Legislature must provide proper machinery and not leave it to the Court for extracting the appropriate machinery out of the very unsuitable language of the statute.

It is stated in Maxwell's Interpretation of Statutes that fiscal statutes must be interpreted strictly in favour of the subject, which means that taxation without express permission of Legislature is not intended. All fiscal rules are to be interpreted according to their plain meaning and that they must not be stretched by judicial interpretation.

(A) There are so many anomalies in the present Act that a word can have different interpretations and wider import. Take for instance the word 'assessee'—it means a person by whom tax is payable. [Sec. 2(2)]. Sections 23(1) and 23(3) speak of 'assessee'. If 'assessee' means a person by whom tax is payable, then where an assessment has been made at nil under section 23(1) or under section 23(3), the person so assessed cannot be strictly called an assessee at all although there is no dispute to the fact that there may be nil assessment under sections 23(1) and 23(3).

Sections 27 and 28 speak of 'assessee' and section 29 speaks of the word 'assessee'.

Section 30 and 33 refer to 'assessee'.

The first thing to notice is the definition of 'assessee' contained in section 2(2) of the Act. Here 'assessee' means a person by whom income-tax is payable. Thus it is quite clear that the definition in terms only is applicable to a living person,

the words being 'a person by whom income-tax is payable' and not 'a person by whom or by whose estate income-tax is payable.'

"Having regard to the definition of 'assessee' as being a 'person who is liable to pay income-tax' the word is not appropriate to a dead man, so that if an assessment is to be made on a dead man,—some violence must be done to the language of the section."

When a person dies before assessment and assessment is made on the deceased person subsequently and tax is demanded from the estate of the deceased, can the heir or the administrator be called an 'assessee'?

Section 29 runs thus: "Where the I. T. O. has determined a sum to be payable by an assessee under section 23, or when an order has been passed under sub-section (2) of section 25 or section 28 for the payment of a penalty, the I. T. O. shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable".

Here the word 'assessee' as used in the first part of that section must be the deceased person and it is equally clear that the second use of the word 'assessee' in the sentence, 'the I. T. O. shall serve on the assessee a notice of demand' means the heir or the administrator, so that one is compelled to give to the word 'assessee' different meanings in different parts of the same section.

Justice Beaumont remarks: "It is to be noticed that there is throughout the Act no reference to the decease of a person on whom the tax has been originally charged, and it is very difficult to suppose the omission to have been unintentional. It must have been present to the mind of the Legislature that whatever principles the payment of income-tax may confer, the privilege of immortality is not amongst them. Every person liable to pay tax must necessarily die and, in practically every case, before the last instalments have been collected, and the Legislature has not chosen to make any provisions expressly dealing with assessment of, or recovering payment from, the estate of a deceased person. In order that the Government may succeed and the assessment made in this case may be held legal, I think one must do a certain amount of violence to the language of section 23(4); I think one must either do a certain amount of violence—I should say a considerable amount of violence—to the language of section 27, or else hold that the privilege conferred on a living person assessed under section 23(4) of getting the assessment set aside is not to be enjoyed by the estate of a deceased person—a distinction in which I can see no logical reason. One must also construe section 29 so as

to give 'assessee' one meaning in one place and another meaning in another place".

Any person assessed at nil may prefer an appeal under section 30. But if the definition is strictly followed such a person is not an assessee.

The word 'assessee' should either be strictly or loosely interpreted. In a word, if the term 'assessee' is to be interpreted widely to include a legal representative in section 23(4) it must be interpreted in the same way throughout.

Under section 42(1) an agent is an assessee. The expression "agent" refers to an agent of non-resident.

The incorporation of section 24B has strengthened the hands of the Executive by providing "assessment of deceased persons." Section 24B provides inter alia that an executor, administrator or other legal representative of a deceased person shall be treated as an assessee for the purposes of an assessment on the income of a deceased person. Para 71C of the Instruction portion of the Income-tax Manual states: "All the consequences of an assessment under section 23 will, therefore, follow: *e.g.* a notice of demand can be issued to the legal representative u/s 29, and an appeal can be filed u/s 30 or other relief sought by him in the circumstances and to the extent that similar relief could have been sought by the assessee had he been alive." This considerably widens the scope of the term "assessee."

(B) Take for instance the word 'property.' In section 9(1) 'property' meaning house properties 'consisting of any buildings or lands appurtenant thereto of which he is the owner.' The term 'property' occurs in sections 4(3)(1) and 6 as well. The word occurs in section 25A. If one is to confine himself to the definition of the word 'property' as given in section 9, section 25A cannot give any wider implication although there it has been very loosely used so as to cover within its ambit landed non-agricultural properties—movable and immovable. In almost all cases property means 'house property' although it implies something more under section 25A, and under section 4(3)(1). In the prescribed form under section 22(2) property means house property. When a petition under section 25A is presented before the I. T. O. he is bound to inquire whether the joint family property has been partitioned or not; the word "property" does not bear the restricted meaning that it bears in section 9 of the Act, but it includes, securities, a business or share in a business.

(C) Take the word 'business.' It has been defined thus: 'business' includes any trade, commerce, or manufacture or any

adventure or concern in the nature of trade, commerce or manufacture' under section 2(4).

Under section 6, heads of income chargeable to income-tax are—

- (1) salaries
- (2) interest on securities
- (3) property
- (4) business
- (5) professional earnings
- (6) other sources.

A person who deals in property must show his income under head 'property' and so on. 'Business' means any trade, commerce or manufacture, etc., and does not therefore cover cases coming under head 'property' and 'other sources.' Money-lending business comes under head 'other sources'.

Section 26(2) runs thus : "Where, at the time of making an assessment under section 23, it is found that the person carrying on any business, profession or vocation has been succeeded in such capacity by another person, the assessment shall be made on such person succeeding as if he had been carrying on the *business, profession or vocation* throughout the previous year, and as if he had received the whole of the profits for that year."

Thus a successor is liable for the tax of his predecessor only where he succeeds his predecessor in business, profession or vocation. Thus where A having income from house property is succeeded by B, the latter cannot be made liable to income-tax. He is only liable for 'business, profession or vocation' and nothing more.

ADVANCE SALARY.

(D) Under section 7, (in notes portion of the Manual) it has been said that an advance of pay is not chargeable to income-tax, but under section 60(2) it is quite clear that an advance of salary is assessable.

EXTENSION OF TIME.

(E) Under section 22(1) the return shall be furnished on or before the 15th of June and the Income-tax Officer may in his discretion extend the date in the case of any company or class of companies.

(F) Under section 22(2) whenever a return is served the assessee is allowed at least 30 days for submission of the return and the assessee as a matter of course, is allowed extension of time for submission of the return. But as there is an express

provision for extension of time under section 22(1), there is no such corresponding provision in section 22(2).

INCORRECT OR INCOMPLETE RETURN UNDER SECTION 23(2).

(G) Whenever a return is filed the I. T. O. may accept the return and make an assessment under section 23(1). But usually all returns are treated as incorrect or incomplete and notices under sections 23(2) and 22(4) are issued. How can an officer treat a return incorrect or incomplete unless he has access to the books of accounts. This leads to the view that whenever a notice is served on the assessee to file a return the I. T. O. shall ask the assessee to file the return after examining his books of accounts and if that is done, an assessment under section 23(1) is to be made but if he does not agree and files return otherwise, I. T. O. is competent to declare the return incorrect and incomplete. This is why it has been so often pressed that Legislature should interfere.

SET-OFF.

(H) Under section 24(1) any assessee sustaining a loss under any of the heads mentioned in section 6, is entitled to claim set-off against his income, profits or gains under any other head. Notwithstanding this express provision it is said that the house property figure cannot be a minus sum.

ASSESSMENT AFTER PARTITION OF A HINDU UNDIVIDED FAMILY.

(I) Whenever a petition under section 25A is allowed assessment is made on the various members and groups of members in accordance with the provision of section 23 A B C, so long undivided, apply under section 25A which is allowed. Assessment is made on the total income of A, B and C ; C alone does not comply with the notice under section 22(4) and consequently an assessment is made under section 23(4). There is no express provision to issue separate demand notices although it is desirable to issue separate notices specifying share of tax of each member.

NOTICE OF DEMAND.

(J) Section 29 as drafted is vague, confusing and not exhaustive. It says that "the I. T. O. shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable". An assessment is made under section 23(4) which is subsequently set aside. At the time of assessment it is found that no tax can be lawfully demanded and he is entitled to a refund of the tax already credited. The Income-tax Officer issues a refund cheque and a demand notice showing the tax refundable, although there is no such thing as sum refundable in section 29 or in the prescribed notice under section 29. This

anomaly can easily be removed by making an insertion to that effect.

(K) Under sections 23(2) & 22(4), it is stated in the respective notices that compliance is *to be made at the Income-tax Office*, although assessments are made in places other than the Income-tax Office. Under section 30, the Assistant Commissioner hearing appeal may fix a place for the hearing of the appeal; whereas there is no such provision in the Act so far as assessment by I. T. O. is concerned. Prescribed notice mentions "Income-tax Office" as the place for compliance and the section does not confer any right to the I. T. O. to make an assessment at any other place.

APPLICATION OF ACT TO SUPER-TAX.

(L) It is stated that super-tax is not applicable to sections 3, 7(1), provisos to section 8, 14(2) and sections 15, 17, 18, 19, 20, 21 and 48. Still without any legislative enactment the Governor General in Council under section 60 has allowed marginal relief in super-tax cases. (*Vide* Notification No 12, dated 4th April 1931).

Let me take a specific case; Mr. Lahiri is found to have an income of Rs. 30,400 in 1931-32, the income-tax payable is Rs. 3,379-11 as.

Super-tax on Rs. 400 is	...	Rs. 18-12
Deduction under Notification		
No. 12, dated 4-4-31 is	...	Rs. 18-12
		Net demand—Nil

So there cannot be any demand for super-tax under the said Notification up to the margin of Rs. 30,708.

CHAPTER II.

Interpretation of Statutes.

The foregoing chapter has dealt with certain anomalies and inconsistencies apparent in the Act. The question now therefore crops up how to interpret statutes.

A statute is the expression of the will of legislative enactment. Indian Statute simply means an Act or Regulation of the Indian Legislature. It is said that Judges "are not responsible for Acts passed by the Legislature." Their duties are to expound laws and not to make laws. They are to construe laws as they are, they can make observations but certainly this does not empower them to make any alteration or amendment or a new innovation.

Chief Justice Sir Barnes Peacock observes: "All that I have to do, is to ascertain the intention of the Legislature by the ordinary and legal rules of interpretation, and, having ascertained what that intention was, to carry it into effect." It is said: "however unjust, arbitrary, or inconvenient the intention conveyed may be, it must receive its full effect when once the intention is plain; it is not the province of a Court to scan its wisdom or its policy. Its duty is not to make the law reasonable but to expound it as it stands according to the real sense of the words." If the words of an Act are clear, they must be followed, even though they lead to manifest absurdity. The Court has nothing to do with the question whether the Legislature has committed an absurdity. When once the meaning is clear and plain, it is not the province of the Court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands, according to the real sense of the word—*Queen v. The Judge of the City of London Court* 1 Q. B 273.

INTENTION OF THE LEGISLATURE.

Whenever an Act or Regulation is passed, a statement of objects and reasons underlying the enactment is placed before the Committee. The ordinary principle of construction is to find out the intention of the Legislature. "In all cases the object is to see what is the intention expressed by the words used." It is a common knowledge that language of Act is not always accurate, precise and perfect. Where there is no ambiguity and possibility of double interpretation, construction

must be according to its ordinary and natural meaning. But where the wordings are ambiguous and equivocal, construction must be on the basis of the intention of the Legislature.

The intention of the Legislature is to be ascertained by ordinary legal rules of interpretation. This is possible after a reference to the 'objects and reasons' of the enactment. The object which the Legislature had in view is often a guide for interpretation. History of Legislation may be ransacked. "In short, when the words admit of but one meaning, a court is not at liberty to speculate on the intention of the Legislature and to construe them according to its own notion of what ought to have been enacted. Nothing could be more dangerous than to make such consideration the ground of construing an enactment *i.e.*, unambiguous in itself."

"In a word, then, it is to be taken as a fundamental principle, standing, as it were, at the threshold of the whole subject of interpretation, that the intention of the Legislature is invariably to be accepted and carried into effect, whatever may be the opinion of the judicial interpreter, of its wisdom or justice. If the language admits of no doubt or secondary meaning, it is simply to be obeyed, without more. If it admits of more than one construction, the true meaning is to be sought, not on the wide sea of surmise and speculation but from such conjectures as are drawn from the words alone or something contend in them."

HEADINGS OF CHAPTER.

Where the wording of an Act admits of any reasonable doubt, the heading of the chapter may be looked into for proper interpretation. It has been said that no reference is permissible to heading of chapter as part of an Act except where the Act specifically states that the Act must be divided into heads. But this view has not been accepted.

Heading of a chapter may be referred to for proper interpretation of any section provided it does not clash with the plain language of the section or where the intention of the legislature is quite clear. "The title, though it has been occasionally referred to as aiding in the construction of an Act, is certainly no part of the law and instructions ought not to be taken into consideration at all."

MARGINAL NOTES.

Under the English Law, marginal notes of any section do not construe the section or cannot be considered as part of the section for the purpose of interpretation. The view of the English Law has been adopted in the case of William Hastie. Chief Justice Stred observed : ".....even if this marginal ad-

dition was a correct reading of the section with which it is printed, it has no legal authority," and is in fact no part of the Act. It is only useful in assisting the reading of this particular section with which it is printed, if that section is open to any doubt as to its true meaning.....On the other hand nothing can be more reasonable than to allow such marginal additions to clear up the text of the written law, when such text was in any respect ambiguous." In *Claydon v. Green* (1868) 37 L. J. C. P. 256, it has been held that marginal notes cannot be used in construing Acts of Parliament. In *Balraj Kamwar v. Jagat Pal Sinha*, 26 All 393, it has been held : "It is well settled that marginal notes to the section of an Act of Parliament cannot be referred to for the purpose of construing the Act. The contrary opinion originated in a mistake and it has been exploded long ago. There seems to be no reason for giving the marginal notes of an Indian statute any greater authority than the marginal notes of an English Act of Parliament. Justice King is of opinion that in India marginal notes can properly be regarded as giving a contemporanea expositio of a meaning of the section when the language of the section is obscure and ambiguous."

But it is submitted that where there is no ambiguity in the text reference to marginal notes for proper interpretation is justified.

SCHEDULE OF ACTS

Schedule of Acts contains enactments, prescribed rules and forms which should be considered as part of the enacted portion of the Act. These forms are said to be 'statutory forms' as opposed to forms contained in Rules framed by authorities empowered by the Act to do so.

In the interpretation of Acts the elementary principle of law is to give full effect to every word. In treating a particular case as an exception to the general rule, the observation of Mr. Justice Spankie may be a guide : "When the language of an Act is free from doubt, it best declares without more language the intention of the law-givers and is decisive of it. The Legislature in such a case must be intended to mean what is plainly expressed and consequently there is no room for construction. This is the rule, and a safe one. Where the language is clear and plain, to say that it is surplusage is to suggest that the Legislature did not know its own meaning and purpose."

It is elementary principle of rule of construction that the definitions contained in an Act are to be applied only when there is nothing repugnant in the subject or context.

Same construction to be given to some words in an Act :—

Whenever a word occurs more than once in the same Act, one must give it the same meaning throughout the Act, unless some definition in the Act or the context shows that the Legislature used the word in different senses. "It has been justly remarked that, when precision is required, no safer rule can be followed than always to call the same thing by the same name. It is, at all events, reasonable to presume that the same meaning is intended for the same expression if every part of an Act. Accordingly, in ascertaining the meaning of an Act, though the proper course would seem to be to ascertain that meaning if possible from a consideration of the section itself, yet, if the meaning cannot be so ascertained, then on the principle, that, as a general rule a word is to be considered as used throughout an Act in the same sense, other sections may be looked at to fix the sense in which the word is there used."

Justice Kernal observes : "It is an ordinary canon of construction that, whenever a particular word is used, having in an Act a defined meaning, and is used afterwards in the Act, the same meaning shall be given to it all through, unless from the context or otherwise, the word, when elsewhere used, appears to have been used in a different sense from that in which it was formerly used."

"In Domat's Civil Law, it is said that two classes of cases occur in which it is necessary to interpret the laws. One, when we find in a law some obscurity, ambiguity or other defect of expression, for in this case it is necessary to interpret the law in order to discover its true meaning. And this kind of interpretation is limited to the expression that it may be known what the law says. The other is, when it happens that the sense of a law, how clear soever it may appear in the words, would lead us to false consequences and to decisions that would be unjust, if the laws were indifferently applied to everything that is contained with this expression."

It is thus clear that when the section admits of ambiguity and the intention of Legislature is not clear, it becomes necessary to consider which of the two constructions is reasonable.

But the intention of the Legislature can only be discovered from the term used and Courts are not competent to speculate upon the existence of any intention not consistent with the plain and obvious meaning of such terms. Construction of statute must be made from what appears to have been the intention of the Legislature but intention must be used from the words used and not from any general inferences to be drawn from the nature of the objects.

Justice Jervis remarks : "If the precise words used are plain and unambiguous, in our judgement, we are bound to construe them in their ordinary sense, even though it does lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of Legislators where we depart from the ordinary meaning of the precise words used merely because we see, or fancy an absurdity or manifest injustice from an adherence to their literal meaning. Court cannot refuse to give effect to a clearly expressed statute because it may lead to hardship. Where the wording of an Act is plain and unambiguous, question of hardship should not influence the Judges." Mr. Kempe observes: "A sense of the possible injustice of an interpretation ought not to induce judges to do violence to well settled rules of construction, but it may properly lead to the selection of one rather than the other of two possible interpretations. Whenever the language of the legislature admits of two constructions and if construed in one way would lead to obvious injustice, the Courts act upon the view that such a result could not have been intended unless the intention had been manifested in express word."

"I take it, we are bound to construe the section according to the plain meaning of the language used, unless we can find either in the section itself or in any other part of the statute, anything that will either modify or qualify or alter the statutory language even if the result of such construction lead to anomalies or be productive even of absurdity."

"The construction of the Act must be taken from the bare words of the Act. We cannot fish out what possibly may have been the intention of the Legislature, we cannot aid the legislature's defective phrasing of the statute, we cannot add, and mend, and, by construction make up deficiencies which are left there. If the Legislature did intend that which it has not expressed clearly, much more, if the Legislature intended something very different, if the Legislature intended something pretty nearly the opposite of what is said, it is not for judges to invent something which they do not meet with in the words of the text; it is not for them to supply a meaning, for, in reality, it would be supplying it; the true meaning in this case is, to take the words as the Legislature have given them, and to take the meaning which the words given naturally imply, unless where the construction of this word is, either by the preamble or by the context of the words in question, controlled or altered and therefore if any other meaning was intended than that which the word purports plainly to import, then let another Act supply that meaning, and supply the defect in the previous."

BENEFICIAL CONSTRUCTION.

It is the general rule of construction that where the language of a statute is clear and unambiguous, judges are bound to follow the languages and not regard the anomalies it may produce and intention of the legislature must be determined "from the words used, and not from any general inferences to be drawn from the nature of the objects dealt with by the statute."

Mr. Kempe remarks: "It is said to be the duty of the judges to make such construction of a statute as shall suppress the mischief and advance the remedy. Even when the usual meaning of the language falls short of the whole object of the legislature, a more extended meaning may be attributed to it, if fairly susceptible of it. If there are circumstances in the Act showing that words are used in the larger sense than the ordinary meaning, that sense must be given to them."

It is hardly necessary to remind the reader that beneficial construction is not to be strained so as to include cases plainly omitted from the natural meaning of the words. For instance, an Act which requires the public houses shall be closed at certain hours on sundays, cannot be construed as extending to Christmas day.

"The effect of the rule of strict construction might almost be summed up in the remark, that where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject, against the legislature which has failed to explain itself."

ANOMALIES IN AN ACT.

"It is a rule that every attempt should be made to avoid inconsistency of meaning. When judges have to construe an Act of the legislature it is their duty so to construe it, if it be possible, as to make the provisions of the Act consistent with each other, to give effect, not to their own ideas as to what ought to be the law, but to the expressed intention of the Legislature."

FISCAL STATUTE.

All the fiscal statutes must be construed strictly. "A duty or tax cannot be imposed except by clear and distinct words, and the Act which imposes a tax or charge upon the subject cannot be extended by implication. If the expressed words of the enactment do not warrant or necessitate a demand of duty or charge, it is not competent to a Court of law in construing such enactment, to extend it, or to give the word a meaning beyond their strict and literal signification, so as to

include any case which may reasonably come within the spirit of the enactment."

All fiscal statutes should be interpreted in a manner most favourable to the subject, provided when the meaning of the enactment is doubtful. The principal of all fiscal legislation in this: "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free however apparently within the spirit of the law the case might otherwise appear to be. In other words if there be ambiguity in any statute, what is called an equitable construction is not admissible in a taxing statute where you can simply adhere to the words of the statute."

"If there is a doubt in the matter, we are bound to decide in favour of the applicant as the subject cannot be taxed except by clear language."

"Statutes which impose pecuniary burdens, also, are subject to the rules of construction. It is a well settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalty. The subject is not to be taxed unless the language of the statute clearly imposes the obligation. A construction, for example, which would have the effect of making a person liable to pay the same tax twice in respect of the same subject matter, would not be adopted unless the words were very clear and precise to the effect. In a case of reasonable doubt the construction most beneficial to the subject is to be adopted. Thus, in estimating a bank manager's 'total income from all sources' for the purpose of ascertaining whether he is entitled to partial relief from income-tax, the yearly value of his free residence in the bank premises, where he resides is not to be taken into account as 'income'".

RULE MAKING POWER.

"It is a recognised principle of law that rules made in pursuance of a delegated authority to that effect must be consistent with the statute under which they came to be made. The authority is given to the end that the provisions of the statute may be better carried into effect and not with the view of neutralising or contradicting those provisions."

The principle of strict construction is applicable to enactments granting power. "However high the authority may be, when a special statutory power is exercised, the person must take care to bring himself within the terms of the statute."

Mr. Kempe remarks: "Rules made under an Act which

prescribes that they shall be led before Parliament for 40 days during which period they may be annulled by a resolution of either House, but that even not so annulled they are to be of the same effect as if contained in the Act, and are to be judicially noticed, must be treated for all purposes of construction or obligation or otherwise, exactly as if they were in the Act. If there is a conflict between one of these rules and a section of the Act, it must be dealt with in the same spirit as a conflict between two sections of the Act should be dealt with. If reconciliation is impossible, the subordinate provision must give way, and probably the rule would be treated as subordinate to the section."

CHAPTER III.

Stamps and Court-fees in Income-tax Proceedings.

AFFIDAVITS.

The proceeding before an Income-tax Officer is not a 'judicial proceeding' except under section 37 of the Income-tax Act. The assessee cannot escape stamp duty on the ground that Income-tax Officer is not a Court. The Indian Court-Fees Act lays down that all judicial affidavits must bear a court-fee of rupee one, while non-judicial affidavits require a court-fee of rupees 2 only. By non-judicial affidavit is meant those affidavits which are presented before any Court. Income-tax Officer is not a Court and in an affidavit filed before him court-fees of rupees 2 are essential; the affidavit in question may be sworn before any officer having powers to administer oath.

Verified statement—under the Indian Income-tax Act, a verified statement is as good as an affidavit when assessee denies existence of any source of business, the onus is on the dept. to prove that the assessee has got business.

WHO CAN APPLY FOR COPIES.

An assessee alone is competent to apply for copies of assessment proceedings, etc. The word 'assessee' has been very loosely used and it includes all persons against whom notice under section 22 has been served. All the partners of a firm are assessee, no matter to whom the notice is served and addressed. All adult members are assessee in a joint Hindu family. Thus there cannot be any objection in granting copies to such persons who are assessee. In Civil and Criminal Courts, persons other than parties to the suit, are allowed copies but under section 54 of the Income-tax Act, such copies cannot be granted to persons other than assessee, as the records are confidential.

AGENT IF CAN APPLY FOR COPIES.

An agent is competent to apply for copy, if he is so authorised, but the application for copy must bear a court-fee of 2 annas. (*Basantalal Ranxidas* 13 P. L. T. 437 ; 136 I. C. 342).

PROCEDURE FOR OBTAINING COPIES.

Whenever an assessee applies for certified copies of an

order, he must affix a court-fee stamp of 2 annas in the petition and a blank demy with a court-fee stamp of 12 annas for certification. The assessee must furnish the office with all necessary papers for writing out the order and he must pay the prescribed searching and copy fees. *There is no prescribed form for copy.*

COMPUTATION OF THE PERIOD OF LIMITATION.

In computing the period of Limitation, the general practice is to count the period requisite for copies from the date of the application for the copy and not from the date of the deposit of folios, etc.

COPIES OF ASSESSMENT ORDER UNDER SEC. 13(4).

As a matter of practice the Income-tax authorities do not allow *verbatim* copy of assessment order under section 23(4). The assessee is only furnished with a portion of the order showing that assessment has been made *ex parte* for failure to comply with the requisition. The portion dealing how the officer arrives at the taxable figure and the basis of his assessment, is not allowed. This is arbitrary and unwarranted.

COPY OF ASSESSMENT ORDER FOR PERSONAL USE.

An assessee is entitled to have copies of assessment orders free of charge. But the petition must bear court-fee worth annas 2. Copying fees and searching fees cannot be charged if copies are prayed for within the assessment year, otherwise such fees are payable. Assessee cannot claim more than one copy for personal use, free of costs. Where an assessment under section 34 is completed in 1931-32, the assessee is entitled to have a copy free. Copy of appellate orders are also supplied free, for personal use and no application is necessary as it is customary to furnish assessee with a copy of the appellate order, when judgment is delivered. Where an assessee has got branch business, he can apply for branch income report from the I. T. O. of the Principal place of business. Where branch income report is referred to in the assessment order by the assessing I. T. O. a copy of it should be granted to an assessee free of charge on application. No separate copy can be granted where the substance of the report forms a part of the assessment order. An assessee is also entitled to a copy of depreciation allowance granted to him on application on his depositing copying and searching fees.

URGENT FEES.

There is a practice of granting copy on the day the petition is filed, provided in addition to other fees an extra fee of rupee one is credited to Treasury for the purpose and the application is marked 'urgent'.

COPIES BY POST.

An assessee can apply for copies by post and may ask for transmission by post provided transmission fees are deposited in Treasury. When a copy is applied for and sent by post in accordance with the rules for the supply of copies through post, the period intervening between the computation and the despatch of copies should be included in the time requisite for obtaining copies. That is the time to be allowed for getting copies should be calculated from the date of application up to the date when copies are despatched and not up to the date when copies are ready for delivery—*Allah Bakash v. Municipal Committee*, 92 I. C. 819.

VAKALATNAMA.

Vakalatnama must bear a court-fee stamp of one rupee.

COURT-FEES IN APPEAL.

In all appeals under sections 31, 32 or 33A court-fees worth 8 annas must be affixed on the memorandum of appeal, but no court-fee can be charged when presenting a petition under section 33 or section 27 of the Act. Similarly court-fees are not chargeable for any petition filed before the Income-tax authorities. In case of refund, an assessee cannot be asked to affix court-fees on the petition praying for refund.

ORDERS OF ASSESSMENT.

When an assessment order has been passed under section 23, any assessee who applies to the Income-tax Officer for a copy of the order must be supplied by the Income-tax Officer with a copy, free of charge, subject to the following conditions :—

(i) That not more than one copy of an assessment order should be supplied free, and (ii) that a copy of assessment order of a year previous to that in which it was passed should not be supplied free of charge unless the applicant satisfies the Income-tax Officer that it is required for his use in some proceedings which are pending under the Indian Income-tax Act, 1922 with reference to the particular assessment covered by the order and which are not time-barred.

Proposed representation to higher authority which are not covered by any provision of the Act will not be regarded as proceedings pending under the Act (I. T. M.).

But are not all partners of a firm separately entitled to have a copy of assessment order free of charge?

Court fees in reference u/s 66—As no mention of Court fees, payable on a reference u/s 66 is to be found in schedules 1 and 2, Court fees Act, section 4 of that Act does not apply

to documents produced in a reference to High Court u/s 66 and therefore no Court fee is chargeable on such documents —(*In re : Khemchand Ramdas* A. I. R. 1933 Sindh 148).

Liability of instruments presented to or issued by Income-tax authorities to Stamp-duty and Court-Fees.

Affidavits.—Exemption (b) to Article 4, Schedule I, Indian Stamp Act, 1899, does not apply to an affidavit required for the immediate purpose of being filed or used in any Income-tax proceedings or before the Income-tax Officer or the Assistant Commissioner or the Commissioner, because none of these officers is a 'Court'.

Copies or Extracts.—Under Article 24, Schedule I, *ibid*, all copies or extracts certified to be true copies or extracts by officers in the Income-tax Department are liable to stamp duty if under the law they are not chargeable with court fees.

Powers of Attorney (Authorisation Letters).—A bare letter of authorisation, *i.e.*, a written statement by an assessee that a certain person appears on his behalf, does not require to be stamped as a "power of attorney". A "power of attorney" is a document which renders it safe for a third person to treat the agent as though he were the principal. Whether a document that is more than a bare letter of authorisation, does, in fact, entitle the agent to bind the principal is a matter of fact that can only be decided with reference to the facts of each case. If it is a "power of attorney" it is liable to stamp duty. The power of attorney should be stamped as an authority to act in a single transaction [Article 48(c) of Schedule I]. There is, however, nothing to prevent an Income-tax Officer granting permission to a representative to appear without acting on behalf of an assessee, *i.e.*, merely to produce or explain accounts, etc.

Orders—Copies of.—Under Schedule I, Article 6, of the Court-fees Act, 1870, every copy of an order passed by an officer in the Income-tax Department in respect of any proceedings under the Act is chargeable with Court fees.

Under Article 9 of the same schedule, every copy of an Income-tax proceeding or order (not otherwise provided for by the Court-fees Act) or copy of any account, statement, report or the like taken out of an office in the Income-tax Department is liable to Court-fees.

Article 6 of Schedule I of the Court-fees Act applies to quasi-judicial orders, *e.g.*, assessment orders including orders enhancing assessments, orders under section 27, orders imposing penalties under section 25(2) and section 28(1) and all appellate and revisional orders generally; and Article 9 to other orders.

Under paragraph 76, a copy of the assessment order passed under section 23 is supplied free of copying charges by the Income-tax Officer on an application by an assessee subject to certain conditions. Such a copy is also free of Court-fee under item 9 of Government of India Notification No. 4650, dated 10th September 1899, if for the assessee's private use. But if a copy of the assessment order is filed as an exhibit in support of an appeal, etc., it must be stamped with the proper court-fee stamp. The position is the same in respect of copies of appellate orders under section 31.

Petitions—Applications.—Under Article 1 of Schedule II of the Court Fees Act, 1870, every application or petition presented to "any executive officer" (which includes any officer in the Income-tax Department) for the purpose of obtaining a copy or translation of any order passed by such officer or any other document on record in such office is chargeable with Court-fees.

Under Article 1 (c) of the same Schedule an application or petition presented to the Central Board of Revenue is chargeable with Court-fee.

Wakalatnama.—Under Article 10 (a) and (c) of the same schedule, a Mukhtharnama or Wakalatnama presented for the conduct of any one case to an officer in the Income-tax Department or the Central Board of Revenue is chargeable with Court-fee.

Appeal—Memorandum of.—Under Article 11 (a) and (b) a memorandum of appeal presented to an officer in the Income-tax Department is chargeable with court-fee.

Refunds.—Applications for refunds under section 48 of the Indian Income-tax Act are exempt from payment of Court-fees, under clause (xx) of section 19 of the Court-fees Act.

Court-fees—Computation of.—In all those cases where the Court-fee is *ad valorem* the monetary value for the purpose of determining the court-fee is the amount of tax or penalty levied by the Income-tax Officer.

Rates of duties.—Stamp duties and court-fees vary from province to province. As regards the details of the rates, reference should be made to the various stamps and court-fees Amendment Acts in the different provinces which have been passed in recent years.

CHAPTER IV.

Mathematical Calculations.

SOME INCOME-TAX FORMULAE.

In income-tax calculations some problems occasionally present themselves in the solution of which mathematics of an order higher than the four simple operations is involved.

The following formulæ may be found useful in solving those problems.

1. Gross amount of salary where tax on salary is a perquisite. Where an employer agrees by contract to bear whatever tax becomes due on the salary paid to an employee such tax becomes perquisite and taxable, and the series continues till the amounts become negligible.

If S = salary actually drawn by the employee,

G = gross salary (including the perquisite) taxable under section 7.

t = tax on G ,

r = rate of tax per Rupee, applicable to S (expressed as a fraction) then

$$G = S(1 + r + r^2 + r^3 + \dots) = \frac{S}{1-r}$$

$$t = Sr(1 + r + r^2 + r^3 + \dots) = \frac{Sr}{1-r}$$

The following values of $\frac{1}{1-r}$ and $\frac{r}{1-r}$ for various rates are helpful in calculating G and t in respect of different salaries,—

rate	$\frac{1}{1-r}$	$\frac{r}{1-r}$	rate	$\frac{1}{1-r}$	$\frac{r}{1-r}$
5 pies	$\frac{192}{187}$	$\frac{5}{187}$	16	$\frac{12}{11}$	$\frac{1}{11}$
6	$\frac{32}{31}$	$\frac{1}{31}$	18	$\frac{32}{29}$	$\frac{3}{29}$
9	$\frac{64}{61}$	$\frac{3}{61}$	19	$\frac{192}{173}$	$\frac{19}{173}$
10	$\frac{96}{91}$	$\frac{5}{91}$	23	$\frac{192}{169}$	$\frac{23}{169}$
12	$\frac{16}{15}$	$\frac{1}{15}$	25	$\frac{192}{167}$	$\frac{25}{167}$
15	$\frac{64}{59}$	$\frac{5}{59}$	26	$\frac{96}{83}$	$\frac{13}{83}$

Example—

An employee drawing Rs. 24,000 a year (taxable @ 19 pies) under the said contract has an assessable salary income of Rs. $24,000 \times \frac{19}{100} =$ Rs. 26,636 and the tax amounts to Rs. 2,636. These figures are also obtained as below :—

Rs. 24,000 as salary bears a tax of Rs.	2,375 at 19 p.
again, Rs. 2,375 as perquisite	” ” 235/1
” Rs. 235/1	” ” ” 23/5
” Rs. 23/5	” ” ” 2/5
” Rs. 2/5	” ” ” -/3
and so on	

Salary Rs. 26,635/11 Tax Rs. 2,635/14
the values approximating to the above figures.

Note—

When the rate for gross salary is higher than the rate for S and section 17 applies, the calculation becomes complicated.

2. Income of Dwelling House.

If O = other incomes, excluding the dwelling house income (but including the income from other properties)

D = total of admissible deductions on account of dwelling house, under section 9(1) (iii), (iv), (v).

V = *bona fide* annual value of dwelling house

then (i) where $V < \text{or } = \frac{6}{5}(O-D)$ and $\frac{5}{8}V \text{ not } < D$
the dwelling house income = $\frac{5}{8}V - D$.

(ii) where $V > \frac{6}{5}(O-D)$ and $\frac{1}{12}O \text{ not } < D$

The dwelling house income = $\frac{1}{12}(O - 12D)$.

This income will in general be a mixed fraction ; so the nearest whole number is to be taken.

Examples :—

(a) In an assessment the business income is Rs. 5,200
and income from other properties is Rs. 1,800
so O = Rs. 7,000

D or admissible deductions = Rs. 125 } for dwelling
and V or *bona fide* annual value = Rs. 3200 } house.

Here $\frac{6}{5}(7000-125) = 750$ and V or 320 is less than 750 so
formula under (i) applies here which gives dwelling
house income = $\frac{5}{8} \times 320 - 125 =$ Rs. 142

and the assessment would be as below

Business	Rs. 5,200
Property (1800 + 142) =	<u>Rs. 1,942</u>
Total income	Rs. 7,142

(b) If V exceeds 750 and is, say, 800 and the other values are the same as above, formula under (ii) applies

and dwelling house income = $\frac{1}{11} (7000 - 12 \times 125)$
 = Rs. 500 and the assessment would be as below

Business	Rs. 5,200
Property (1800 + 500) =	2,300
Total income	Rs. 7,500

It is to be seen that 10 $\frac{2}{3}$ % of total income is Rs. 750/- from which are to be deducted $\frac{1}{4} \times 750$ or Rs. 125 and other deductions Rs. 125 leaving net income Rs. 500.

(c) If O =	Rs. 7,000
D =	Rs. 267
V =	Rs. 320

dwelling house income = $\frac{5}{8} \times 320 - 267 = 0$

If D were more than $\frac{5}{8} V$ the income would be negative, but according to section 9(2) the income should be taken at zero.

(d) If O =	Rs. 7,000
D =	Rs. 584
V =	Rs. 800

dwelling house income = $\frac{1}{11} (7,000 - 7008) = 0$

If D were more than $\frac{1}{11} \times O$ the income would be negative, but according to section 9(2) the income should be taken at zero.

Gross Taxable Dividend.

Some companies pay tax not on their entire income which is distributed later on as dividend but on only certain portion of it, because interest on securities has been fully taxed and agricultural income is exempt. The net dividend received by a shareholder of any such company represents the difference between the gross dividend and the tax at maximum rate on the taxable portion of gross dividend.

If D = amount of dividend income to be included in the total income of the shareholder-assessee.

G = gross dividend on which abatement of tax, if any, is to be allowed.

N = net dividend actually received by the shareholder-assessee and shown in the dividend warrant,

x = percentage of taxable income of the company to its entire income,

y = percentage of agricultural income of the company to its entire income,

r = rate of tax per rupee for company (expressed as a fraction) at the time of declaration of dividend,

then $D = \frac{N}{1 - xr} (1 - y)$

$$G = \frac{NX}{1-Xr} \text{ and tax deducted} = Gr.$$

Special cases—

(i) Where agricultural income is nil, $y = 0$

$$\text{and } D = \frac{N}{1-Xr} \text{ and } G = \frac{NX}{1-Xr}$$

(ii) Where agricultural income is 60% and $x = 40\%$

$$D = \frac{N}{2.5+r} \text{ and } G \text{ is also the same.}$$

(iii) Where $y = 0$ and $x = 100\% = 1$

$$D = G = \frac{N}{1-r}.$$

Examples—

(a) If $N =$ Rs. 7,200
 $x =$ 66.6% = $\frac{2}{3}$
 $y =$ 10% = $\frac{1}{10}$
 $r =$ 18 pies per Re = $\frac{18}{100} = \frac{9}{50}$

then $D = \text{Rs. } \frac{7,200}{1 - \frac{2}{3} \times \frac{9}{50}} (1 - \frac{1}{10}) = \text{Rs. } 6,912.$

$$G = \text{Rs. } \frac{2}{3} \times \frac{7,200}{1 - \frac{2}{3} \times \frac{9}{50}} = \text{Rs. } 5,120$$

tax deducted = $Gr = \text{Rs. } \frac{2}{3} \times 5,120 = 480$

Entire dividend = $N + \text{tax deducted} = \text{Rs. } 7,200 + 480 = \text{Rs. } 7,680$

and is composed of agricultural income 10% = Rs. 768

taxable non-agricultural dividend 66.6% = Rs. 5,120

non-taxed balance (non-agricultural) = Rs. 1,792

Rs. 7,680

(b) If $N = \text{Rs. } 2,652$

$x =$ 80% = $\frac{4}{5}$

$y = 0$

$r =$ 19 pies per Re = $\frac{19}{100}$

then $D = \text{Rs. } \frac{2,652}{1 - \frac{4}{5} \times \frac{19}{100}} = \text{Rs. } 2,880$

$$G = \text{Rs. } \frac{4}{5} \times \frac{2,652}{1 - \frac{4}{5} \times \frac{19}{100}} = \text{Rs. } 2,304.$$

tax deducted = $Gr = \text{Rs. } \frac{4}{5} \times 2,304 = \text{Rs. } 228.$

Entire dividend = $\text{Rs. } (2,652 + 228) = \text{Rs. } 2,880.$

$G = 80\% \text{ of Rs. } 2,880 = \text{Rs. } 2,304.$

(c) If $N = \text{Rs. } 865$

$X = 100\% = 1$

$Y = 0$

$r = \frac{19}{100}$

then $D = G = \text{Rs. } \frac{865}{1 - \frac{19}{100}} = \text{Rs. } 960.$

(d) An assessee received Rs. 5,750 as dividend from a company 5% of whose income was from agricultural sources and only 60% was taxable, the balance being non-taxable. Here

$$N = \text{Rs. } 5,750$$

$$x = 60\%$$

$$y = 5\%$$

$$r = 26 \text{ pies and } 25\% \text{ surcharge} = 32\frac{1}{2} \text{ pies in the Re.}$$

$$\text{Hence } D = \frac{5750}{1 - \frac{60}{100} \times \frac{32\frac{1}{2}}{192}} \left(1 - \frac{5}{100}\right) = \text{Rs. } 6,080$$

$$G = \frac{5750 \times 60}{100 \left(1 - \frac{60}{100} + \frac{32\frac{1}{2}}{192}\right)} = \text{Rs. } 3,840$$

$$\text{Tax deducted} = \text{Rs. } 650.$$

$$\text{Entire dividend} = N + \text{tax deducted} = 5750 + 650 = 6,400$$

and is composed of agricultural income	=	320
non-taxable	=	2240
Taxable	=	3840

$$\text{Rs. } 6,400$$

4. AMOUNT OF COMPOUND INTEREST

If C=capital lent out

r=rate of interest per Re. per annum (expressed as a fraction)

t=the number of times the interest is added to capital in a year

y=years during which the loan remains in force

I=accrued interest

$$\text{then } I = C \left[(1+r)^{yt} - 1 \right]$$

Examples—

(a) Rs. 500 lent at 18% per annum, interest added to capital every six months, will yield in $3\frac{1}{2}$ years

$$\begin{aligned} \text{interest} &= \text{Rs. } 500 \left[\left(1 + \frac{18}{100} \times \frac{1}{2}\right)^{7 \times 2} - 1 \right] \\ &= \text{Rs. } 500 \times (1.09)^7 - \text{Rs. } 500. \end{aligned}$$

the value of the first term may be conveniently obtained with the help of logarithm tables;

thus, let	$E = 500 \times (1.09)^7$
log	$F = \log 500 + 7 \log 1.09$
	$= 2.6990 + 7 \times .0374$
	$= 2.6990 + .2618$
	$= 2.9608$
	$= 913.5$
and interest	$= \text{Rs. } 413/8.$

(b) Rs. 200 lent at 15% per annum, interest added to capital every year, will yield in 3 years
 interest = Rs. 200 $[(1 + \frac{15}{100})^3 - 1]$

$$= \text{Rs. } 200 \frac{(115^3 - 100^3)}{(100^3)}$$

$$= \text{Rs. } 200 \frac{15 \times 34725}{100^3}$$

$$= \text{Rs. } 104.175$$

(c) In the particular case of continuous compound interest, t should be taken as approaching infinity and

$I = C(e^{Yt} - 1)$ where e = Napierian base

Rs. 1,000 lent at 12% per annum; interest added to capital continuously, will yield in 5 years interest

$$= \text{Rs. } 1,000 (e^5 - 1)$$

$$= \text{Rs. } 1,000 \times 822$$

$$= \text{Rs. } 822/-$$

5. Range for marginal relief under section 17.

If L = a limit of income where a higher rate of tax begins

r = rate of tax per Re. for lower incomes } expressed
 R = rate of tax per Re. for higher incomes } as fractions.
 X = range of income exceeding L .

$$\text{then } X = \frac{L(R-r)+r-1}{1-R}$$

the result will in general be a mixed fraction of which only the integral portion is to be taken. The following table gives the ranges for different rates—

L	rates		X	range for Sec. 17	
	lower	higher			
2,000	0 pies	5 pies	52	2,000	2,052
"	0	6	64	2,000	2,064
5,000	5	6	25	5,000	5,025
"	6	9	81	5,000	5,081
10,000	6	9	162	10,000	10,162
"	9	12	166	10,000	10,166
15,000	9	10	81	15,000	15,081
"	12	16	340	15,000	15,340
20,000	9	12	332	20,000	20,332
"	16	19	346	20,000	20,346
30,000	12	15	507	30,000	30,507
"	19	23	709	30,000	30,709
40,000	15	18	688	40,000	40,688
	23	25	478	40,000	40,478

In cases where the total income includes an amount exempted from tax, the relief under Section 17 is *NECESSARY* only when

$$(L-E)(P-p)-X(192-p)+p > 192$$

where L = the limit where higher rate begins

X = excess of total income above L

E = amount exempted from tax

P = pies of tax for L

p = pies of tax for incomes below L .

Examples—

	(a)	(b)	(c)	(d)
L	5,000	15,000	20,000	30,000
X	60	150	290	617
E	1,215	2,000	3,500	8,000
P	9 pies	16	19	23
P	6	12	16	19
range } available }	5,081	15,340	20,346	30,709

(a) Testing value or $(L-E)(P-p)-X(192-p)+p$
 $= 2,785 \times 3 - 60 \times 186 + 6$

$= 201$ which is greater than 192

so relief is necessary, for

tax without relief = Rs. $(5,060 - 1,215) @ 9$ pies = Rs. $180\frac{1}{4}$

tax with relief = Rs. $(4,999 - 1,215) @ 6$ pies + Rs. 61
 $=$ Rs. $179\frac{1}{4}$, which is less.

(b) Testing value = $13,000 \times 4 - 150 \times 180 + 12$
 $= 25012$, which is greater than 192

so relief is necessary, for

tax without relief = Rs. $(15,150 - 2,000) @ 16$ pies
 $=$ Rs. $1,095\frac{1}{3}$

tax with relief = Rs. $(14,999 - 2,000) @ 12$ pies + Rs. 151
 $=$ Rs. $963\frac{1}{7}$ which is less.

(c) Testing value = $16500 \times 3 - 290 \times 176 + 16$
 $= -1524$, which is less than 192

so relief is unnecessary, for

tax without relief = Rs. $(20,290 - 3,500) @ 19$ pies
 $=$ Rs. $1,661\frac{1}{8}$

tax with relief = Rs. $(19,999 - 3,500) @ 16$ pies + Rs. 291
 $=$ Rs. $1,665\frac{1}{4}$ which is greater.

(d) Testing value = $22000 \times 4 - 617 \times 173 + 19$
 $= -18722$, which is less than 192

so relief is unnecessary, for

tax without relief = Rs. $(30,617 - 8,000) @ 23$ pies =
Rs. $2,709\frac{1}{5}$

tax with relief = Rs. $(29,999 - 800) @ 19$ pies + Rs. 615
 $=$ Rs. 2795, which is greater.

TAX TABLES FOR DIVIDENDS.*

Net Rs.	@ 18 p.	@ 19 p.	@ 26 p.	@ 29½ p.	@ 32½ p.
1	•108448333	•109826586	•156626506	•179723503	•203761755
2	•206896666	•219655179	•313253012	•359447004	•407523510
3	•310344099	•329479768	•469879501	•539170509	•611285262
4	•413793332	•439306353	•626506002	•718894092	•815047021
5	•517241665	•549132948	•783132503	•898617515	1•018808770
6	•620689998	•658959537	•939759003	1•078241013	1•222570324
7	•724138331	•768786127	1•096385504	1•258064516	1•426332287
8	•827586664	•878612716	1•253012004	1•437788018	1•630094043
9	•931034997	•983439306	1•409638505	1•617511527	1•833855798

*With the kind permission of Mr. J. N. Set B.A. (Harvard), Income-tax Officer, Bengal.

CHAPTER V.

Appellate Forms, Model Forms of Appeal, Review and Petitions.

Rule 21 prescribes that "an appeal under section 30 shall, in the case of an appeal against a refusal of an I.T.O. to make a fresh assessment under section 27, be in form A ; in the case of an appeal against an order of an I. T. O. under section 25 (2) in form C ; in the case of an appeal against an order of an I. T. O. under section 28 in form D and in other cases in form B."

FORM A.

Form of appeal against an order refusing to re-open an assessment under section 27.

To

The Assistant Commissioner of

The day of 19 .

The petition of of sheweth as follows :—

1. Under the Indian Income-tax Act, 1922, your petitioner has been assessed on the sum of Rs. for the year commencing the 1st day of April 19 .

2. Your petitioner was prevented by sufficient cause from making the return required by section 22 or did not receive the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or had not a reasonable opportunity to comply or was prevented by sufficient cause from complying with the terms of the notice under sub-section (4) of section 22 or sub-section (2) of section 23, as more particularly specified in the statement attached.

3. Your petitioner therefore presented a petition to the Income-tax Officer under section 27, requesting him to cancel the assessment. This petition the Income-tax Officer by his order dated of which a copy is attached, has rejected.

4. Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and that he may be directed to make a fresh assessment in accordance with the law.

(Signed) _____

STATEMENT OF FACTS.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein and in the above statement of facts is true to the best of my information and belief.

(Signed) _____

I. T. 73.

FORM B.

Form of appeal against assessment to Income-tax.

To

The Assistant Commissioner of

The _____ day of

19

The petition of

sheweth as follows:—

1. Under the Indian Income-tax Act, 1922, your petitioner has been assessed on the sum of Rs. _____ for the year commencing the 1st day of April, 19 ____ . The notice of demand attached hereto was served upon him on 19 ____ .

2. Your petitioner's income accruing or arising or received or deemed under the provisions of the Act to accrue or arise or to be received in British India for the year ending the day of 19 ____, amounted to Rs. _____.

3. Such income and profits actually accrued or arose or were received during the period of _____ months and _____ days.

4. During the said year your petitioner had no other income or profits.

5. Your petitioner has made a return of his income to the Income-tax Officer _____ under section 22, sub-section (2), of the Act and has complied with all the terms of the notice served on him by the Income-tax Officer [under section 23 (2) and or [section 22 (4)].

Your petitioner therefore prays that he may be assessed accordingly (or that he may be declared not to be chargeable under the Act.)

(Signed) _____

Grounds of appeal.

I, _____, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed) _____

I. T. 16.

FORM C.*Form of appeal against an order under Section 25(2)*

To

The Assistant Commissioner of Income-tax.

*The day of*The petition of
sheweth as follows :—

1. Under section 25 (2) of the Indian Income-tax Act 1922, a penalty of Rs. _____ has been imposed on your petitioner. The notice of demand attached hereto was served upon him on _____

2. Your petitioner was prevented by sufficient cause as more particularly explained below from giving notice within the time prescribed by section 25 (2) to the Income-tax Officer of the discontinuance of his business, profession or vocation.

3. Your petitioner therefore requests that the order of the Income-tax Officer imposing a penalty of Rs. _____ upon your petitioner may be set aside.

(Signed) _____

STATEMENT OF FACTS.*Form of verification.*

I. _____, the petitioner, named in the above petition, do declare that what is stated therein and in the above statement of facts is true to the best of my information and belief.

(Signed) _____

I. T. 82.

FORM D.*Form of appeal against an order under Section 28.*

To

The Commissioner of Income-Tax.

The Assistant Commissioner of Income-Tax.

*The day of 19*The petition of
sheweth as follows :—

1. Under section 28 of the Indian Income-tax Act, 1922, a penalty of Rs. _____ has been imposed on your petitioner

by the Income-tax Officer
Assistant Commissioner. The notice of demand attached hereto was served upon him on

2. Your petitioner did not conceal the particulars of his income or deliberately furnish inaccurate particulars thereof but as will be seen from the statement of facts attached returned it at its real amount to the best of his knowledge and belief.

3. Your petitioner therefore requests that the order of the Income-tax Officer
Assistant Commissioner imposing a penalty of Rs. upon your petitioner may be set aside.

(Signed) _____

STATEMENT OF FACTS.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed) _____

I. T. 83.

FORM D-1

Form of appeal against an order refusing to register a Firm u/s 26-A.

To

The Assistant Commissioner of

The _____ day of _____ 19____

The petition of.....of post office....., District.....sheweth as follows :—

u/s 26-A of the Indian Income-tax Act, 1922, your petitioner applied to the Income-tax Officer for the registration of the firm _____ By his order dated the _____ a copy of which is herewith attached, the I. T. O. has refused to register the said firm.

Your petitioner therefore requests that the order of the I. T. O. may be set aside and that he may be directed to register the firm.

Signed

Grounds of Appeal.
Form of Verification.

I, _____ the petitioner named in the above petition do hereby declare that which is stated therein is true to the best of any information and belief.

Signed _____

FORM E.

Form of appeal under section 32 (2) of the Indian Income-tax Act, 1922.

To

The Commissioner of Income-tax,

The _____ *day of* _____ 19 .

The petition of _____ sheweth as follows :—

1. Under section 31 (3) of the Indian Income-tax Act, 1922, the Assistant Commissioner of _____ has increased the tax payable by your petitioner from Rs. _____ to Rs. _____

2. Your petitioner prays that the enhancement may be set aside or reduced to Rs. _____ for the reasons stated below :—

(Signed).....

Grounds of appeal.

1, _____, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed).....

I. T. 17.

(7)

Rule 22A prescribes that “an appeal to the Commissioner for a reference to a Board of Referees shall, in cases falling under sub-section (1) of section 23A, be in form F, and in cases falling under sub-section (2) of section 23A, be in form G.”

FORM F.

To

The Commissioner of Income-Tax

*The**day of*

19

The petition of

sheweth as follows :—

The Income-tax Officer of _____ with the previous approval of the Assistant Commissioner of _____ has passed an order dated _____ of which a copy is attached under sub-section (1) of section 23A of the Indian Income-tax Act, 1922, that the sum payable as income-tax by the firm/association known as _____ shall not be determined and that the share of your petitioner in profits and gains of the said firm/association shall be included in his total income for the purpose of assessment, and a notice of the said order has been served upon your petitioner on the _____ day of _____

2. Your petitioner being aggrieved, for the reasons stated below, by the order of the Income-tax Officer, prays that the said order may be set aside.

(Signed).....

Grounds of appeal.

Form of verification.

1, _____, the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed).....

(8)

FORM G.

To

The Commissioner of Income-tax.

*The**day of*

19

The petition of

sheweth as follows :—

1. The Income-tax Officer of _____ with the previous approval of the Assistant Commissioner of _____ has passed an order dated _____ of which a copy is attached under sub-section 23A of the Indian Income-tax Act, 1922, the sum payable by the income-tax of the company known as the _____ shall not be determined and that the proportionate share of your petitioner in the profits and gains of the said

2. Your petitioner, being aggrieved, for the reasons set out below, by the order of the Income-tax Officer, prays that the said order may be set aside.

(Signed).....

I, _____, the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed).....

(9)

Form of appeal against an order refusing to re-open the assessment under section 27.

When an assessment is made under section 23(4), the assessee can file an objection under section 27 for cancellation of the said assessment; but if the I. T. O. rejects the petition, the assessee can prefer an appeal against the order of refusal. He will be supplied with form A and after filling up the form and making verification therein, he is required to attach a statement of facts therein together with the certified copy of the order refusing to re-open the assessment. The appeal shall 'ordinarily' be presented within 30 days and the assessee is further entitled to the days spent for obtaining copies for computing the period of limitation.

STATEMENT OF FACTS.

1. For that the assessee could not comply with the requisition under sections 23(2) and 22(4) as he did not receive the notice by the due date.

2. For that the learned Income-tax Officer should have accepted your petitioner's statement which could have been verified by a reference to the Postmaster concerned.

3. For that the learned I. T. O. should have allowed time to the assessee to furnish him with the certificate from the Post Office as to the date of delivery of the notice.

4. For that the assessee referred the matter to the Post Office and the enclosure will show that the notice was delivered after the expiry of the date of hearing.

5. For that the assessee had no reasonable opportunity to comply with the requisition.

Regard being had to the fact that notice under sections 23(2) and 22(2) was served after the expiry of the date of hearing before the learned I.T.O., Your honour shall be pleased to cancel the assessment and proceed to make the assessment according to the provisions of the law.

And your petitioner, as in duty bound, shall ever pray

(Signed).....

No. 2.

1. That the learned I. T. O. should have considered the fact that non-compliance was due to accident, pure and simple over which the appellant had no control.

2. For that the assessee duly received the notice under sections 23(2) and 22(4) and started for the camp with all his books of account.

3. For that the only conveyance available in the locality is boat which could not reach the camp by the time fixed owing to high wind and cyclone.

4. For that the assessee reached the camp on that very date when he was told that the assessment had already been made under section 23(4).

5. For that the learned I. T. O. refused to re-open the petition under section 27 as he held it was not a "sufficient cause" within the meaning of section 27.

6. For that the learned I. T. O. failed to use his discretion properly inasmuch as the non-compliance was due to a "sufficient cause."

7. For that unless the I. T. O. can show that the non-compliance was due to negligence, he was not justified in rejecting the petition under section 27.

In view of the facts stated above, your petitioner prays that the records be called for and the assessment be cancelled and the proceeding be remanded for *de novo* assessment.

And your petitioner etc.....

Dated.....

No. 3.

1. For that the learned I. T. O. has no justification to reject the petition for time, for filing the return.

2. For that the learned I. T. O. should have given due consideration to your petitioner's application that owing to dissensions between the members, the book could not be adjusted.

3. For that unbalanced books were produced before the officer and he should have allowed reasonable opportunity to the assessee.

4. For that the assessee was not a habitual defaulter.

Under the circumstances, the petitioner had no reasonable opportunity to comply with the notice under section 22(2). The appellant before your honour prays that the case be reopened and fresh assessment be made according to provisions of law.

And your petitioner etc.....

Dated.....

No. 4.

1. For that the learned I. T. O. should have allowed time to the appellant as he was himself suffering from heart trouble.

2. For that admitting that the presence of the assessee is not required, the learned I. T. O. should have considered the facts that the gomasta in question was illiterate and he was not in a position to explain away the books of accounts as explained in your appellant's petition.

3. For that the learned I. T. O. should have accepted the medical certificate showing your petitioner's precarious condition at the time of assessment.

4. For that the learned I. T. O. should have accepted the evidence adduced by the appellant's witness that the gomasta is illiterate.

5. For that the learned I. T. O. should have at least allowed a short adjournment, denial of sufficient time is tantamount to denying him any reasonable opportunity.

Your poor petitioner, therefore, prays for cancellation of the said assessment for reasons stated above.

And your petitioner etc.....

Dated.....

No. 5.

1. For that the assessment under section 23(4) was clearly wrong and bad in law.

2. For that the assessee must not be penalised for non-production of accounts which were not at all called for.

3. For that the assessee fully complied with the requisition under sections 23(2) and 22(4).

4. For that there was no default for which an assessment under section 23(4) was permissible.

5. For that the omission to fill up the accounting year in the verification column is too technical which was not vital inasmuch as the accounting year appeared in the profit and loss statement and the issue of notice under sections 23(2) and 22(4) clearly supports appellant's contention.

6. For that there cannot be any non-productions within the meaning of section 22(4) when accounts were not called for.

Your petitioner, therefore, prays for cancellation of the assessment.

And your petitioner etc.

Dated.....

Form of appeal against an assessment under section 23(3).
It must be in form B and must be presented ordinarily within 30 days from the receipt of the notice of demand which must be attached. Certified copy of the assessment order is not required and hence time spent for obtaining copies cannot be allowed for computing the period of limitation.

No. 1 (Form B)*Grounds of appeal.*

1. For that the assessment is bad in law.

2. For that the learned I. T. O. is not justified in making an estimated assessment under section 23(3) read with section 13 of the Act.

3. For that the books of accounts are adjusted and balanced and profit therefrom can be easily deducted.

4. For that the profits, taken by the learned I. T. O., are fanciful and a reference to the expenditures incurred, makes the assessment purely arbitrary.

5. For that the percentage of profits is too high and no businessman can have such profits.

6. That a reference to the records of the assessee in the same locality would have given a basis for estimate.

7. That estimated assessment if at all justified, should have been made having regard to the admissible expenditures actually incurred.

That the records be called for and the assessment be reduced to

Dated.....

And your petitioner etc.....

No. 2

1. For that the learned I. T. O. erred in law and facts.

2. For that the status of the assessee is "unregistered Firm" and not Hindu undivided family.

3. For that the learned I. T. O. should have excluded the house property income of individual partners in the assessment.

4. For that the I. T. O. should have allowed depreciation allowances.

5. For that he should have allowed all admissible deductions in full, especially the boarding expenses of the employee.

6. For that the learned I. T. O. should have allowed all "bad debts" actually written off.

7. For that the learned I. T. O. has absolutely no jurisdiction to make an assessment in the area he has assumed a jurisdiction not vested in him by law and as such the assessment is *ultra vires*.

That the records be called for and assessment be made on the basis of accounts produced.

Dated.....

And your petitioner etc.....

No. 3.

1. For that the learned I. T. O. while holding the status of the assessee as H. U. F., has wrongly included individual income of individual member.

2. For that law does not allow inclusion of individual income in the joint family income.

3. For that the assessment is untenable.

4. For that the learned I. T. O. has exercised a jurisdiction not vested in him by law.

5. For that the learned I. T. O. should have allowed deductions of the premium paid by all adult members of the family, up to the prescribed maximum.

6. For that the learned I. T. O. should have allowed litigation expenses initiated for recovering trade debts and further he should have allowed the fees paid to the auditor, as audit was completed before the return was filed.

In view of the fact that the assessment is not according to law, your petitioner prays that records be called for and assessment be made on the basis of books produced.

Dated... .

And your petitioner etc.....

No. 4

1. For that the assessment is untenable.

2. For that inclusion of the profits from H. U. F. trading business into the individual assessment clearly vitiates the assessment.

3. For that the books of accounts are all balanced and adjusted and estimated assessment is bad in law.

4. For that the learned I. T. O. is clearly wrong, while making a turn over assessment, by including the closing stock in the sale figure.

Your petitioner, therefore, prays for proper assessment.

Dated.....

And your petitioner etc.....

FORM C.

Appeal against an order under section 25(2) must be presented in form C, which must be filed within 30 days ordinarily from the date of receipt of the notice of demand. Certified copy of the order need not be attached but demand notice must be.

STATEMENT OF FACTS.

1. For that the learned I. T. O. should have considered that omission to give notice of discontinuance is due to inadvertence, pure and simple.

2. For that the petitioner, after the discontinuance was lying seriously ill for which a medical certificate was duly submitted.

3. For that the learned I. T. O. should have considered the petition of discontinuance filed subsequently.

4. For that it is a case of omission and not of commission.

In view of this, your petitioner prays that the order of the Income-tax Officer imposing penalty of Rs.....upon your petitioner may be set aside.

Dated.....

And your petitioner.....

FORM D.

Form of appeal against an order under section 28 shall be in form D before the Assistant Commissioner to be presented ordinarily within 30 days from receipt of the notice together with the notice of demand. The certified copy of the order need not be filed.

No. 1

STATEMENT OF FACTS.

1. For that the learned I. T. O. is not justified in imposing penalty as the notice is bad in law.

2. For that the assessee has not concealed any particular of his income,

3. For that the petition filed is true and correct.

4. For that the profit and loss accounts filed along with the return, reveal the true state of affairs.

5. For that the assessee did not furnish any inaccurate particular.

6. For that the assumption of the learned I. T. O. that some source of income has been concealed, without mentioning the source is illegal, shaky and theoretical.

7. For that the learned I. T. O. must discover the omission in course of any proceeding and that there was no proceeding pending then.

8. For that there has been no deliberate suppression of any source of income.

Regard being had to the facts that the notice is bad in law and further that there has been no deliberate concealment, the assessee cannot be penalised under section 28 and the imposition of penalty may be set aside.

No. 2

1. For that the alleged omission in the return is due to ignorance to fill up the form properly.

2. For that the assessee showed all receipts and disbursements.

3. For that the learned I. T. O. should have considered that the figure in the return was arrived at after deducting all expenditures admissible or not.

4. For that the learned I. T. O. should have added back the inadmissible expenditure without imposing any penalty.

5. For that it is a technical omission and does not at all come under section 28.

6. For that the fine imposed may be cancelled.

Dated.....

And your petitioner etc.....

No. 3

1. For that the imposition of penalty without giving any opportunity to the assessee is clearly bad in law.

2. For that as the notice under section 34 is clearly untenable, the proceeding under section 28 cannot stand.

3. For that the learned I. T. O. should have considered that the submission of the amended return is an extenuating circumstance and as such imposition of full penalty is not justified.

4. For that at any rate the petitioner must not be held to have deliberately furnished any inaccurate particular.

Your petitioner prays that the order imposing penalty may be set aside or reduced to a negligible figure.

Dated.....

And your petitioner etc.....

FORM D.

The appeal against the order of the Assistant Commissioner is in form D within 30 days from receipt of the notice of demand. A certified copy of the order need not be filed along with it.

STATEMENT OF FACTS.

1. For that the learned Assistant Commissioner erred both in law and facts.

2. For that the learned A. C. should have set aside the fine altogether.

3. For that the imposition of further penalty without giving the petitioner reasonable opportunity is a serious irregularity.

4. For that the learned A. C. should have held that the proceeding before the I. T. O. was irregular and illegal and further the appellate authority has no right to enhance the penalty on appeal.

Regard being had to this, the appellant before your honour prays for cancellation of the fines imposed.

Dated.....

And your petitioner etc.....

FORM E.

Appeal before the Commissioner against an order of the A. C. enhancing the assessment under section 31(3) must be filed within 30 days from the date of the order together with a certified copy of the order.

Grounds.

1. For that the learned A. C. is not competent to assess anew a source of income not assessed by the I. T. O.

2. For that the assessment made by the A. C. enhancing the tax on that point is not maintainable.

3. For that the learned A. C. should have upheld the decision of the learned I. T. O. so far as allowance under head "bad debts" are concerned.

4. For that the learned A. C. should have accepted the book profits *in toto*.

5. For that the enhancement is not justified as the appellant was not given any opportunity.

In view of the facts stated above the petitioner prays that the assessment be reduced.

And your petitioner etc.....

Dated

FORM F.

Appeal against an order under section 23A(1) is in form F and must be filed within 30 days attaching a certified copy of the order. Days spent for obtaining a copy must be allowed in computing the period of limitation.

Grounds.

1. For that the learned I. T. O. is not justified to make the assessment under section 23A.

2. For that the learned I. T. O. should have held that the firm has not been formed for the purpose of evading and reducing the liability to tax.

3. For that the learned I. T. O. should have secured the previous approval of the Assistant Commissioner.

4. For that the learned I. T. O. has erred both in law and facts.

5. For that he should have held that the capitalist partner cannot be held liable for his investments alone.

6. For that the learned I. T. O. is not competent to make an assessment under section 23A.

7. For that a reference may be kindly made to a Board of Referees for decision.

Dated.....

And your petitioner etc.....

FORM G.

All cases falling under section 23A(2) shall be in form G. The appeal must be presented within 30 days and allowance must be made for days spent for obtaining copies. A certified copy of the office order must be filed along with it.

Draft specimen of petition under section 27.

When an assessee is served with a demand notice under section 29, he can file an objection under section 27 in case of an assessment under section 23(4) within 30 days from receipt of the notice of demand. There is no prescribed form. It is desirable to file the demand notice along with the petition to show that the petition is in time.

No. 1

To

The Income-Tax Officer.

Re.—petition under section 27 in the matter of
against an order of assessment passed by the I. T. O. dated

The above named petitioner being aggrieved by the order of the learned I. T. O., begs to file this objection from amongst others.

Grounds.

1. For that the learned I. T. O. has erred both in law and facts.

2. For that the assessee received the notice after the expiry of the date fixed for hearing.

3. For that the assessee had no reasonable opportunity to comply with the requisition under section 23(2) and 22(4).

4. For that a reference in the post office will convince your honour that the notice was delivered long after the assessment.

In view of this, your petitioner prays for cancellation of the assessment according to the provisions of law.

Dated.....

And your petitioner etc.....

No. 2*Grounds.*

1. For that the assessee was prevented by sufficient cause from making compliance.

2. For that he boarded the train in time but owing to an accident, he arrived at the office late.

3. For that the assessee was not negligent and there was no laches on his part.

4. For that an assessment under section 23(4) should not be resorted to unless there is something equivalent to negligence.

5. For that the learned I. T. O. has erred both in law and facts.

Under the circumstances, the petitioner before your honour prays that the assessment may be cancelled and an assessment be made *de novo*.

Dated.....

And your petitioner etc.....

No. 3

1. For that the learned I. T. O. has erred both in law and facts.

2. For that there cannot be any assessment under section 23(4) when there is apparently no default.

3. For that the assessee produced all books of accounts as per notice.

4. For that non-production, of accounts not called for, cannot be any ground for an assessment under section 23(4).

For that the assessment is vague, arbitrary and fanciful.

In view of this, your petitioner prays that the case may be re-opened for fresh assessment.

Dated.....

And your petitioner etc.....

No. 4

Grounds.

1. For that the assessee did not receive any notice under sections 23(2) and 22(4).

2. For that an assessment under section 23(4) without issuing a notice under sections 23(2) and 22(4) cannot stand.

3. For that the I.T.O. should either have to accept the Return or should have issued notice under sections 23(2) and 22(4).

4. For that the learned I. T. O. has erred both in law and facts.

Regard being had to the fact that this being a case of non-receipt of notice under sections 23(2) and 22(4), your honour shall be pleased to cancel the assessment according to the provision of law.

Petition of review under section 33 before the Commissioner.....

An assessee is entitled to file a petition of review under section 33 within one year from the date of the order complained against with a certified copy of the order. An assessee can apply under section 33 against any assessment made under section 23.

Draft specimen.

No. 1

To

The Commissioner of Income-Tax

Re.—petition of review under section 33 against the order of the learned A. C. passed on in the case of

The above-named petitioner being aggrieved by the decision of the learned A. C., begs to prefer this petition under section 33, from amongst others.

Grounds.

1. For that the learned A. C. is clearly wrong in his finding of facts and observation.

2. For that the learned A. C. should have held that there was no default on the part of the assessee.

3. For that the original notice under sections 23(2) & 22(4) did not call for the accounts specifically.

4. For that non-compliance cannot be presumed unless the accounts are asked for.

5. For that the status of the assessee is Un-registered Firm and not H. U. F.

6. For that there cannot be any assessment of House Property.

7. For that the learned officer should have allowed abatement for the partnership profit which has already been taxed.

8. For that the assessment is clearly wrong and *ultra vires*.

In view of this, your petitioner prays that the records be called for and adjudication may be arrived at after proper scrutiny.

Dated.....

And your petitioner etc.....

No. 2*Grounds.*

1. For that the assessment has been made under section 23(4) which is not appellable.

2. For that the assessee has got two branches within Calcutta, with head office at Calcutta, as unregistered firm.

3. For that the assessee along with his brother has got a joint family trading concern at Khulna. Both the assessments are made separately.

4. For that the learned Income-tax Officer, Calcutta District IV, has added the share of the assessee at Khulna business, while making an assessment of the Calcutta business for the purpose of raising the rate of tax.

5. For that the assessment is clearly illegal and is not warranted by law and as such he is entitled to a refund.

Your petitioner, therefore, prays for your honour's interference as the income, profits or gains, if any, cannot be amalgamated with the income of the Calcutta Business. And your honour's petitioner, as in duty bound, shall ever pray.

Dated.....

Form of notice under section 34 of the Indian Income-tax Act.

Income-tax Office.

Dated.....

To.....

Whereas I have reason to believe that your income from

(a) which should have been assessed

(b) which has been assessed

in the financial year ending the 31st March 19

(a) has wholly escaped assessment,
partially

(b) has been assessed at too low a rate and I therefore
propose

(a) to assess the said income that has escaped assessment

(b) to re-assess your said income at the correct rate.

I hereby require you to deliver to me not later than or
within 30 days of the receipt of this notice, a return in the
attached form of your income from all sources which was
assessable in the said year ending.

I. T. Officer.

CHAPTER VI.

Income-tax in relation to Accounts.

HOW TO ASCERTAIN TAXABLE INCOME

No. A.

<i>Debit—</i>		<i>Credit—</i>	
1. Boarding expenses	Rs. 2,004	1. Gross profits in trading account	Rs. 10,000
2. Dharmada	... 75	2. Rent	... 1,000
3. Shop rent	... 1,300	3. Bonus	... 500
4. Salaries (Including partner's salary of Rs. 1000)	... 4,000		11,500
5. Income-tax	... 2,000		
6. Interest paid	... 500		
	Rs. 9,879	Net Rs. ..	1,621 3,075

*Add back inadmissible
Expenditures—*

Net ... 4,696

Taxable income is 46.96 at 6 pies plus a surcharge of $12\frac{1}{2}$ per cent. for 1931-32 (but the surcharge will be $\frac{1}{4}$ of the tax in 1932-33 as per Supplementary Finance Act of Nov. 1931).

Dharmada	... 75
Partner's Salary	... 1,000
Income-tax	Rs. 2,000
	3,075

No. B.

<i>Debit—</i>		<i>Credit—</i>	
1. Salaries	Rs. 7,000	1. Gross profits	Rs. 25,000
2. Mortgage Interest payable	... 1,000	2. Commission	... 11,000
3. I. Tax & S. Tax	... 9,500	3. House property less $\frac{1}{4}$	2,000
			38,000

4. Bad debts (actually written off) ...	5,000	Net ...	11,500
5. Bonus paid ...	3,500	Add back I. Tax & Super-tax ...	9,500
			<hr/> 21,000
6. Postage & Insurance	500	Grand total Rs. ...	21,000
	<hr/> Rs. 26,500		
		Taxable income Rs. ...	21,000

<i>Debit—</i>		<i>No. C. Credit—</i>	
1. Collection charges Rs.	100	1. Gross profits Rs.	2,500
2. Salaries ...	2,000	2. Partnership profits already taxed ...	6,000
3. Contingent charges ...	250	3. Arat (commission) ...	1,200
4. Boarding charges ...	300	4. House property (gross)	400
			<hr/> 10,100
5. Embezzlement by employee ...	500		
	<hr/> 3,450		
6. Interest ...	800	Net ...	4,345
7. Bad debts ...	500	Tax already paid on Rs. 6,000	
	<hr/> 4,750	No demand can lawfully be made.	
8. Audit fees ...	500		
9. Trade loss ...	505		
	<hr/> 5,755		

<i>Debit—</i>		<i>No. D. Credit—</i>	
1. Audit fees Rs.	200	1. Profits as per account Rs.	3,000
2. Salaries ...	2,500	2. Interest ...	1,500
3. Loss from theft by outsider	1,000	3. Partnership (Profits) ...	2,500
		4. H. P. (less $\frac{1}{3}$ th) ...	1,000
			<hr/> 8,000
4. Premium paid ...	100		
5. Ground rent ...	500		
	<hr/> 4,300		
		Net ...	3,700
		Less 2,500-already taxed	1,200

Tax on Rs. 1,200 at 6 pies per rupee plus a surcharge amounting to $\frac{1}{3}$ of the tax for 1931-32 and $\frac{1}{4}$ of the tax for 1932-33.

No. E.

The Book reveals the following :—

1. Net from business Rs.	10,000
9. Taxes paid of which	
I. Tax is 2,500 ...	3,000
3. Dividend already	
taxed ...	800
4. House property ...	600
5. Commission ...	30,000
6. Interest ...	20,000
7. Salaries ...	10,000
	<hr/>
	74,400
	<hr/>

Debit—

Taxes paid including in-	
come-tax of Rs. 2,500 Rs.	3,000
Salaries ...	10,000
	<hr/>
	Rs. 13,000

Credit—

Business profits	Rs.	10,000
House property	...	600
Commission	...	30,000
		<hr/>
Interest	...	20,000
		<hr/>
		70,600
Add back I. tax	...	2,500
		<hr/>
		73,100
Less	...	13,000
		<hr/>
		60,100
Dividend	...	800
(already taxed)		<hr/>
		60,900

Tax already deducted on Rs. 800 at 26 pies

Net Rs.	60,100
Less $\frac{1}{6}$ th H. P.	100
	<hr/>
I. Tax at 26 pies on Rs.	60,000
S. tax is payable on Rs.	60,800
Less	50,000
	<hr/>
	10,800

Tax payable -/1/1p in the rupee ; plus surcharge amounting to $\frac{1}{8}$ of the tax for 1931-32 and $\frac{1}{4}$ for 1932-33.

In a case the I. T. O finds the income of the assessee in 1932-33, the following :—

Pension	3,173	} 110 852—Surcharge 43-5	Deduction at source	
Interest securities	6,292			
„on tax free,	675			
Property	875			
Total income	11,015			
Less L. I. P.	299	}		
Do free security	675			
Less tax paid	Rs. 10,041 110+852=	tax Rs. 627-9 962		
			I. Tax refundable	Rs. 334-7
Surcharge on pension	73-15 ($\frac{1}{8}$)			
Do on property	9 ($\frac{1}{4}$)			
Less credited	82-15 43- 5			
			Surcharge Rs. 39-10	to be paid
Take another case ;—			H. U. F.	
Int. on securities,	62,335	Tax deducted at source 8,416-5		
Tax free	1,30,859			
Property	4,014			
Business Loss	24,936			
Total income	1,72,332			
Less tax free	1,30,859			
Income to be taxed Rs. 41,437—			Tax Rs.	5,616-2- 771
Surcharge on property	137-15			
Do on securities	633- 1	I. Tax paid 6,387-2 8,416-5		
Super tax and Surcharge payable			771	
			11,882-9	Less I. Tax refundable 2029-3-

HOW TO FILL UP THE RETURN

Whenever an assessee is furnished with a return under section 22, it is the duty of the assessee first to ascertain the period for which the income is to be shown. The verification clause contains the accounting year which must be filled up. As the filling up of the return is very important, the following suggestions may be helpful to the assessee. Unfortunately the form as it stands is very clumsy, vague and confusing too. It is therefore essential to show by practical lessons how the return is to be filled up. Take for instance :

(1) Returns of individuals—

1. SALARY.

Section 6 mentions six heads of income chargeable to income-tax of which the first head is salary which is to be taxed at source under section 16. Thus a salaried man must show the salary received and the tax deducted at source, if any. But bonus, commission, perquisite, etc., must be shewn along with the salary. The assessee must not show the commuted pension or the accumulated balance to a provident fund. Capital sum received must not be shewn in the return. Perquisite includes rent-free quarters.

ALLOWANCE PERMISSIBLE UNDER "SALARY".

Such perquisites as tiffin, domestic services on the Railway or Steamer passages provided by employees are not taxable. But "Delhi moving allowance", "Delhi camp allowance" from special allowances to meet the higher cost of living are not taxable. Tuition grants paid to military officers are not taxable, (Para 22 I. T. M.). But attached salaries are taxable. Sums deducted under the authority of Government for the purposes of securing a deferred annuity are not taxable but these must be shown for computation of total income.

ADVANCE PAY.

But where a Government servant takes an advance of pay the tax is not chargeable on the advance, but the tax is charged on the full salary of the month in which the advance is recovered by deduction without any regard to the deduction.

2. INTEREST ON SECURITIES.

The second head is "interest on securities." Income-tax is not payable on the interest received from securities which are tax-free but the interest received therefrom is taken into account under section 16(1) in determining the total income.

Where a bank or other concern engaged in business like that of a bank, received deposit or loans in the course of its business and invests the money so borrowed, it should be allowed to set off the entire interest on such borrowings.

No allowance can be made for any interest; the assessee has to pay on money borrowed for purchasing securities. The recent amendment of section 8 has considerably widened the scope of the section and commission paid to a banker is now an allowable deduction. But when the assessee's business consists in buying and selling securities, the income there is to be shewn under head "business" and the assessee is entitled to all expenditures.

3. PROPERTY.

When the assessee is the owner of the property, the return

must contain the annual valuation of the building excepting the business premises. But there is a difference between an owner and a lessee inasmuch as income from lease-hold is to be shewn under head "other sources" whereas owner must show the income under heads "property". Vacancy allowance is a permissible deduction.

The *bona fide* annual value of a house must be shewn in the return. But in case of dwelling house the annual valuation must not exceed 10 p.c., of his total income. The valuation may be less or more. In short when the valuation is more, the annual value must not exceed 10 p.c., of the total income but where the valuation is less than the 10 p.c., the lesser valuation should be taken. But when selami. *i. e.*, premium has been realised at the inception of the tenancy, the rents actually realised do not represent the annual value but something more in view of the premium exacted.

ALLOWANCE BY THE OWNER FROM THE ANNUAL VALUE OF THE HOUSE PROPERTY

For repairs the owner assessee is competent to claim 6th of—

- (a) the annual value whether repairs have been undertaken or not, as cost of repairs. Proofs are not necessary.
- (b) Annual premium for insuring the property against risk of damage or destruction must be supported by proof of actual expenditure, *i. e.*, Fire Insurance, Marine and Accident Insurance.
- (c) Interest paid or payable should be allowed as a deduction, irrespective of the purpose for which the mortgage has been enacted. Interest paid for capital borrowed is now an admissible deduction by virtue of the amendment.
- (d) Ground rent which may have to be paid forms legitimate allowance.
- (e) Any sums paid on account of land revenue are deductible.
- (f) Collection charges not exceeding six per cent, for which proofs are essential. Collection charges are not permissible for residential houses.
- (g) Vacancy allowance may be allowed according to the circumstances of the case by the I. T. O. It applies primarily only to these cases in which the house in question is not in the occupation of the owner but is habitually let out to tenants and the

vacancies referred to are vacancies between the different tenancies.

The aggregate of the above allowances must not exceed the total income of the assessee and the excess cannot be set off from other sources. *But the house property figure cannot be a minus sum.* Depreciation of house property is not allowable u/s 9; municipal tax paid by a tenant is an addition to rent and hence cannot be allowed.

But it will not be out of place to mention in this connection that properties held under trust and other legal obligations cannot be held liable under the Income-tax Act.

4. "BUSINESS IN RESPECT OF PROFITS OR GAINS OF ANY BUSINESS CARRIED ON."

Business has been defined as trade, manufacture or commerce. When business is carried on, question of tax for a firm arises, otherwise not. An assessee while filing a return must show his income under this head. The return is to contain the profits of all branch business as well and this will facilitate the assessee to claim any set-off. Under section 64 an assessee having branches elsewhere can only be assessed by the officer of the principal place of business. Of course the branch officer is competent to examine the branch accounts for transmission to the officer of the principal place of business, the report of his examination.

A business assessee can claim certain allowances as shown below :—

- (1) Rental paid for business premises but this does not entitle the assessee to claim any deduction for rent of his dwelling house as the expenditure is personal.
- (2) When business premises is used partly for business purposes and partly for dwelling house, the I. T. O. must give allowance proportionately.
- (3) Cost of repairs when the assessee has undertaken to bear costs.
- (4) Interest paid on capital borrowed forms a legitimate deduction, recurring subscriptions in mutual benefit societies are to be deemed as borrowed capital, premium paid for insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks, etc., forms legitimate deductions. (Take for instance, Fire insurance, Marine insurance, Accident insurance etc.).
- (5) Recurring expenditure in the shape of current repairs of buildings, etc., are to be allowed.

- (6) Depreciation allowance must be claimed by the owner in the prescribed form and excess depreciation can be claimed next year. But depreciation allowance must not exceed the original cost and it can be set off against income under any other head.
- (7) When the machineries are obsolete, an assessee can claim obsolescence allowance.
- (7a) In respect of animals used for the purposes of business which have died or become useless—the difference between the original cost and the amount realised for carcasses.
- (8) Amounts of land revenue, local municipal rates are allowable.
- (8a) Bonus or commission paid to an employee for services rendered. The amount in question and those of profits and general practice in similar businesses must be reasonable with regard to the pay of the employee.
- (9) All expenditures incurred solely for earning profits as opposed to capital expenditures. All expenditures incurred for the employees and audit charges before filing the return are allowable.

When the assessee has adopted cash system of accountancy, the assessee while filing the return must show the cash received; but in case of mercantile system of accountancy, the basis of calculation must be on all income earned which arose or accrued less the allowances actually incurred, though not actually received or paid. The closing balance must tally with the opening of the next year. The stock may be valued either at the cost price or at the market price but once a method is adopted it must be adhered to. Thus in the mercantile system of accountancy not only cash receipts and expenditures but also notional receipts and expenditures are entered.

- (10) Bad debts are allowable provided they are actually written off. They are of two classes, *e.g.*, *capital bad debts* and *trade bad debts*. When a person, not a professional money-lender lends money which becomes a bad debt, such bad debts are capital and cannot be deducted; but when a money-lender or a trader lends money or advances money or sells goods in course of his business, it becomes a bad debt when it becomes irrecoverable.

TWO PROOFS ARE ESSENTIAL.

- (1) That the assessee must prove that the debt is irrecoverable and (2) it became so at the year of accounting.

INTEREST HOW TO BE SHOWN IN THE RETURN.

When cash system is the basis of accountancy,

- (a) *Cash system*:—Entries of interest as it falls due, merely show that it has been earned and hence the amount of such entries need not find a place in the return,
- (b) *Mercantile basis*:—When the basis of accountancy is mercantile the entries of interest earned, represent entries of actual receipt which must be shown in the return. Should the assessee incur a loss by way of bad debt, he is entitled to claim the principal and interest lost.

INADMISSIBLE ALLOWANCES.

Capital expenditures, charitable expenses, amount of income-tax and super-tax, salaries of partners, personal expenses of the assessee, previous year's loss and any expenditure incurred not for earning profits are inadmissible.

5. PROFESSIONAL EARNINGS.

The fifth head chargeable to income-tax is 'professional earnings' under section 6. An assessee is chargeable to income-tax for the profits or gains of any business or vocation adopted by him. Income, profits or gains received from any business, legal or otherwise, cannot escape tax. Income from wagering contracts are assessable; a book-maker is liable to tax. Unlicensed manufacture of liquor is punishable by law but income therefrom is taxable. Prostitution is immoral but income may be taxable.

Professional fees received in British India are taxable. Under the ambit of this head comes the following, *e.g.*, lawyers, judges, solicitors, medical men, editor, engineers and others.

ALLOWANCE.

An assessee is entitled to claim allowances in respect of expenditures incurred solely for the purpose of profession or vocation. Personal expenses of the assessee and capital expenditures are not allowable deductions. Depreciation and obsolescence allowances are now admissible u/s 9.

6. OTHER SOURCES.

The last head is other sources, *i.e.*, income from any source not provided in other heads. The term is very wide and it is not possible to mention all the items falling under the head 'other sources.' But it can be conveniently suggested that following sources of income are to be included within 'other sources.' Practically it includes within its ambit all sources which do not find a place to be included in other heads:

- (a) Income of a zemindar in a permanently settled estate, *e.g.*, jalkar, hatkar, etc.
- (b) Income from a leasehold.
- (c) Examiners' fees, directors' remuneration, interest from bank deposit and partnership profits.

ALLOWANCE.

All *bona fide* expenditures incurred solely for earning profits.

CLASSES OF ASSESSEES.

INDIVIDUAL.

Any assessee other than a company is to furnish a return within the prescribed time, under rule 19, on receipt of a notice under section 22(2) which is a condition precedent for filing the return. The assessee must be allowed at least 30 days' time to file the return and he can apply for further time as well.

An individual assessee may have partnership profits, may be a member of a Hindu undivided family, may have income from company as a shareholder, etc.

In the return he must show the following, if he actually derives income from them.

- (1) Individual income.
- (2) Partnership profits, if any, but such profits cannot be taxed twice, once in the hand of the firm and again in the hand of the individual.—The share is taken for calculating the total income and the rate.
- (3) Dividends received, if any.
- (4) Personal house property income, if any.

The income which he, under law, is not bound to show:—

- (1) The individual assessee is exempted to show the income he receives from the joint family for income-tax purposes. An individual is not liable to pay income-tax or super-tax on any sum received from the joint fund nor the sum is taken into consideration for computing his total income.

ALLOWANCES PERMISSIBLE.

(a) All *bona fide* business expenses incurred solely for the purpose of earning profits.

(b) A sum not exceeding $\frac{1}{4}$ th of his total income for premiums paid for his life under an insurance policy.

PROCEDURE.

The return must be filed by the due date or by the extended date as the case may be. Although there is no specific provision for extension of date for filing return under section 22(2), but as a matter of practice extensions are allowed for filing the return whenever necessary. Where the assessee fails to file the return (*i.e.*, where persons on whom notices under section 22(2) have been served) an assessment under section 23(4) shall follow and the assessee loses his right of appeal. His remedy is to file an objection under section 27 within 30 days from receipt of the notice of demand. But if the petition under section 27 is rejected, he can file an appeal before the Assistant Commissioner within 30 days from the date of the communication of the order under section 27. The period spent for obtaining copies is excluded for computing the period of limitation. Where the appeal is allowed, the case is remanded to the Income-tax Officer for *de novo* assessment. But where the appeal stands rejected, there is no second appeal against the order of the Assistant Commissioner refusing to re-open the case. The assessee may file a petition under section 33 before the Commissioner within a year from the date of the order complained against, if any question of law is involved.

Where the return is filed by due date or where an amended return under section 22(3) is filed before the assessment is completed, the Income-tax Officer may, in his discretion, accept the return and make an assessment under section 23(1). But where the return is considered incorrect and incomplete, the Income-tax Officer issues a notice under section 23(2) and 22(4) calling upon the assessee to adduce evidence and produce books of account which may be called for 3 years prior to the assessment year. It may be submitted that the procedure adopted is not intended by the Legislature in view of the fact that an Income-tax Officer cannot under any stress of imagination treat a return as incomplete and incorrect without having any access over the account books. He must have access to the books of accounts before declaring a return incomplete or incorrect.

Where full compliance of the requisition under sections 23(2) and 22(4) is made, the assessment is made under section 23(3) against which the assessee can prefer an appeal within 30 days to the Assistant Commissioner. The appeal must be presented 'ordinarily' within 30 days from the date of the order. The time spent for obtaining the copy cannot be excluded as the copy is not essential. Against Assistant Commissioner's order, there is no second appeal, but the assessee can file a petition of review under section 33 within a year or

he can move the Commissioner within 60 days for a reference to the High Court from the date of the communication of order under section 31, if he thinks that there is a question of law.

Where no compliance is made, assessment is made under section 23(4) against which no appeal lies, but the assessee can file an objection under section 27 and can prefer an appeal against the Income-tax Officer's order refusing to re-open the case under section 27. It must be understood that a petition under section 27 or an appeal against an order refusing to re-open the case under section 27 can only be allowed where the assessee is prevented by a sufficient cause or has no reasonable opportunity to comply with the requisition of the Income tax Officer. Questions of merit cannot be raised or decided; but whether an assessment is really made under section 23(4) or 23(3) may be fought out. An assessment made under a wrong head does not shut out appeal.

While filing the return the assessee must sign the verification himself or by his authorised representatives and the accounting year must be shown in the verification clause otherwise return may be treated as invalid and an assessment under section 23(4) will stand.

The assessee must put the actual loss or profit figure. The return must not be filed by guess. Estimated losses or profits shown in the return invalidate the returns.

The account books of an individual with year ending 1930, English calender, show the following:—

<i>Debit—</i>		<i>Credit—</i>	
1. Salaries	Rs. 300	1. Salary	Rs. 1,000
2. Interest	... 700	2. Gross profits in business	... 4,000
3. Godown rent	... 500	3. Partnership profit (already taxed)	... 2,000
4. Boarding & Travelling expenses	... 400	4. Profit of the undivided Hindu family	1,000
5. Previous year's loss	... 100		
	Rs. 2,000	5. Interest	... 800
Life Insurance premium	... 200	6. Dividend	... 200
		7. House property	... 600
			Rs. 9,600

Return under section 22(2) served on the individual and how to fill it up.

FORM OF RETURN OF TOTAL INCOME FOR INDIVIDUALS, FIRMS, HINDU UNDIVIDED FAMILIES AND OTHER ASSOCIATIONS OF INDIVIDUALS UNDER SECTION 22 (2) OF THE INDIAN INCOME-TAX ACT, 1922,

Income-tax year 1931-32.

Name of assessee T. Ray

Designation Merchant

Address Kalia (Jessore)

Statement of total income during the previous year.

1	2	3
Sources of income.	Amount of profits or gains or income during the previous year	Tax already charged on the income
	Rs.	Rs. A.
1. Salaries (including wages, annuity, pension, gratuity, fees, commission, allowances, perquisites, including rent-free quarters) or profits received in lieu of, or in addition to, salary or wages ...[See note (1)].	1,000	
1A. The contributions made by an employer to the accounts in a recognised provident fund of the person making the return		
1B. The interest accruing to the account mentioned in 1A which is not exempt from income-tax [Sec. 58F (2)]		
2. Interest on securities (including debentures) already taxed ... [See note (2)]		
3. Interest on securities of the Government of India or of local Governments declared to be income tax free " (3)		

FORM OF INCOME-TAX RETURN

1 Sources of income.	2 Amount of profits or gains or income du- ring the pre- vious year.	3 Tax already charged on the income.
4. Property as shown in detail in Schedule A (4)	500	
5. Business, trade, com- merce, manufacture or dealing in pro- perty, shares or se- curities (details as in note 5) (5)	2,000	
6. Profession (6)		
7. Dividends from companies (net) (7)	200	
8. Interest on mortgages, loans, fixed deposits, current accounts, etc.	800	
9. Ground rent ...		
10. Any source other than those mentioned above including any income earned in partnership with others ... [See note (8)]	2,000	
Total	6,500	
Deductions claimed—		
(a) on account of insurance pre- mia ...	200	
(b) on account of contribution to a provident fund to which the Provident Funds Act applies		
(c) on account of contribution to a recognised provident fund [section 58A (a)]		
(d) others		

I declare that to the best of my knowledge and belief the information given in the above statement is correct and complete, that the amounts of income shown are truly stated and relate to the year ended 31-3-31 and that no other income accrued or arose or was received by family during the said year and that the family had during the said year no other sources of income.

Date 17-8-31

Signature T. Ray.

N.B.—(a) Income accruing to you outside British India received in British India is liable to taxation, and must be entered by you in the form.

(b) All income from whatever source derived must be entered in the form including income received by you as a partner of a firm.

NOTE 1.—In column 2 should be shown the gross amount of salary and not the net amount after deductions on account of income-tax, provident funds, etc.

NOTE 2.—“Interest on securities” mean the interest on promissory notes or bonds issued by the Government of India or a local Government, or the interest on debentures or other securities for money issued by or on behalf of a local authority or company. Where income-tax has been deducted from the interest, or where the interest has been paid income-tax free, the amount of tax so deducted or paid should be added to the amount of interest actually received, and the gross amount so arrived at should be entered in column 2 of the statement. The term “interest on securities” does not include interest on fixed deposits or mortgages or other loans, which have to be shown under heading 8.

The interest on securities of the Government of India or of local Governments declared to be income-tax free should be shown under head 3. These which are not declared to be income-tax free should be included under this head.

Entries under this head must be supported by the certificate issued by the person or company paying the interest under section 18(9) of the Act.

NOTE 3.—(a) The income-tax payable on the interest receivable on a security of a local Government issued income-tax free is payable by the local Government and not by the holder of the security.

(b) Only the interest on securities of the Government of India or of a local Government declared to be income-tax free should be entered against this head. Such interest will not be charged to income-tax, but it must be included in the statement of total income in order to ascertain the rate of income-tax chargeable on other income. *It is chargeable to super-tax.*

(c) Particulars of any interest on securities issued by other authorities and stated to be free of income-tax should be entered against head 2, as income-tax on such interest is actually paid by these authorities on behalf of the recipients.

NOTE 4.—The tax is payable under this head in respect of the *bona fide* annual value of any buildings or lands appurtenant thereto, of which you are the owner, other than such portions of such buildings and lands as you may occupy for the purpose of your business.

NOTE 5.—(a) Where you keep your accounts on the mercantile accountancy or book profits system, you must file a return in the following form :—

Income, profits or gains from business, trade, commerce.

	Rs.	As.
Income, profits or gains as per Profit and Loss Account for the year ended 31-3-1931.	6,500	
Add any amount debited in the accounts in respect of—		
1. Reserve for bad debts		
2. Sums carried to reserve for provident or other funds		
3. Expenditure of the nature of charity or presents		
4. Expenditure of the nature of capital		
5. Income-tax or super-tax		
6. Drawings or salary of proprietor or partners ...		
7. Rental value of property owned and occupied ...		
8. Cost of additions to or alterations, extensions, improvements of, any of the assets of the business		
9. Interest on the proprietor's or partner's capital, including interest on reserve or other funds ...		
10. Losses sustained in former years	1,000	
11. Losses recoverable under an insurance or contract of indemnity		
12. Depreciation of any of the assets of the business		
13. Private or personal expenses and expenses not incurred solely for the purpose of earning the profits		
TOTAL ...	7,500	
Deduct—Any profits included in the account already charged to Indian income-tax and the interest on securities of the Government of India or of local Governments declared to be income-tax free		
Balance		

(Signature of the person making the return.) T. RAY.
Dated 17-8-1931.

(b) Where you do not keep your accounts in such a form, you must file a statement showing how you arrive at the taxable profits, *i.e.*, showing details of the gross receipts and of the expenditure you

propose to set against those receipts. No deductions are permissible on account of—

- (i) Property owned and occupied by the owner of a business for the purposes of a business ;
- (ii) Additions to, or alterations, extensions, or improvements of any of the assets of the business ;
- (iii) Interest on the capital of the proprietors or partners of the business ;
- (iv) Bad debts not actually written off in the accounts ;
- (v) Losses sustained in previous years ;
- (vi) Reserves of any kind ;
- (vii) Sums paid on account of the income-tax or super-tax or any tax levied by a local authority other than local rates or municipal taxes in respect of the portion of the premises used for the purpose of the business ;
- (viii) Any expenditure of the nature of charity or a present ;
- (ix) Any expenditure of the nature of capital ;
- (x) Any loss recoverable under an insurance or a contract of indemnity ;
- (xi) Depreciation of any kind other than that specified in the Act ;
- (xii) Drawings or salaries of the proprietors or the partners ;
- (xiii) Private or personal expenses of the assessee ;
- (xiv) Any expenditure of any kind which is not incurred solely for the purpose of earning the profits.

If you have included any such sums in your expenditure in your books, you must exclude them from the expenditure permissible for the purpose of arriving at your taxable profits.

(c) You are also required to attach a statement showing the sums charged in your accounts under the provisions of section 58K(2).

NOTE 6.—The income, profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred *solely* for the purpose of such profession or vocation, provided that no allowance is made on account of any of your personal expenses. Professional fees received by you in any part of India (whether within British India or not) must be included by you in your receipts.

NOTE 7.—Income-tax chargeable on the profits of companies is paid by the companies, so that the dividends received by the shareholders represent the net amount remaining after any income-tax due by the company has been paid. This amount should be entered in column 2 of the statement. The proportionate tax will be added in the Income-tax Office.

If the rate of tax applicable to your total income is less than the rate of tax applicable to the profits or gains of the company at the time of the declaration of such dividends, you may, by attaching the company's certificate received with the dividends, have the excess collected from your dividends from the company set against the tax payable by you on your other income instead of having to apply separately for a refund.

NOTE 8.—Agricultural income from land not paying land revenue or local rates to an authority in British India should be included under this head.

NOTE 9.—Deductions from total income can only be made for insurance premia in respect of insurance on your own life or on the life of your wife, or in respect of a contract for a deferred annuity on your own life or on the life of your wife. No deduction is permissible in the case of any other form of insurance except in the case of Hindu undivided families where deductions are permissible on account of premia paid in respect of insurance on the life of any male member of the family or of his wife. The original receipt or the certificate of the insurance company to which the premium was paid must be attached to the return.

Serial number	Name of village or town where the property is situated.	Name of street and number of property.	In the case of municipalities the name of the person in whose name the property stands in the municipal registers.	Whether the property is occupied by owner or is let.	Annual letting value of the property.
1	Kalia	3	4	5 Let out	6 600/-

After deducting the expenditures as shown per account with the receipt less joint family income of rupees one thousand which is not taxable in the hands of the individual, the net income is Rs. 6,600 less $\frac{1}{4}$ th of the house property Rs. 100, net total comes to Rs. 6,500 as per return shown.

Business profits have been shown to be Rs. 2,100 after deducting all expenditures. Rs. 500 have been shown from house property after deducting $\frac{1}{4}$ th of Rs. 600. Joint family income cannot be amalgamated with the individual income, hence Rs. 1,000 have been left out of account.

The Income-tax Officer shall proceed to make out the taxable income in the following manner :—

Rs. 6,500 as per return.

Add back previous year's loss „ $\frac{1,000/-}{7,500/-}$

The claim for the difference of rate in income-tax for the dividend of Rs. 200 is disallowed as no certificate is forthcoming
 Less Dividend Rs. $\frac{200/-}{7300/-}$

Net Rs. 7,300.

Less life insurance premium „ $\frac{200/-}{7,100/-}$

Tax on partnership profit, *i.e.*, on Rs. 2,000 has already been paid making the taxable income Rs. 5,100.

Tax at 9 pies per rupee on Rs. 5,100 and surcharge in the year shall be $\frac{1}{4}$ th of the tax under the Supplementary Finance Act of November 1931 and $\frac{1}{4}$ up to 1934-35.

HINDU UNDIVIDED FAMILY.

From the return stage up to the end, the procedure of assessment is indential with the procedure of the assessment of individual, which has been clearly stated before.

Usually the notice under section 22(2) is served on the manager or the *karta* of the joint family but service of notice on any other adult male member will not invalidate the proceedings. Return u/s 22(1) can be signed by any adult male member of the H. U. F. and not necessarily by the member on whom the notice u/s 22(2) has been served.

ALLOWANCES.

A Hindu undivided trading family is liable to assessment for the income derived from house property or for the profits derived from a joint family venture. The separate or personal income of the member is not chargeable with the income of the undivided trading family. Super-tax can only be levied where

the Hindu undivided family has got an income above Rs. 75,000. All members of the joint family and their wives even are entitled to claim deductions for premiums paid to insure their lives. But these deductions are limited to $\frac{1}{4}$ th of the total income. All members of the Hindu undivided family are assesseees and are entitled to copies.

WHERE MEMBERS CLAIM SEPARATION.

Where any member of the Hindu undivided family hitherto undivided, claims separation, the Income-tax Officer shall serve notices on all the members concerned. The officer shall have to proceed to determine the question of separation and where he is convinced, he shall pass orders accordingly ; but all the members shall be jointly and severally liable for the tax for the year and in the next year separate files will have to be started against each member as the case may be.

The assessee cannot object to an assessment simply because no order has been passed under section 25A. It must be presumed that the joint family continues as such unless and until an order is passed to the contrary. When petition under section 25A is allowed, it is desirable that separate demand notices shall be served on the members.

ILLUSTRATIONS.

The accounts of A, B and C constituting a joint family show the following :—

1. Profits from business	...	...	Rs,	10,000
2. House property	...	...	"	1,500
3. Income of A as physician	...	...	"	2,000
4. Income of B as lawyer	...	...	"	4,000
5. Income of C as teacher	...	...	"	1,200
6. Interest of Hindu undivided family			"	500
7. Life Insurance premium paid by A			"	200
Do. paid by B	...	...	"	100
Do. paid by C	...	...	"	150
8. Salaries paid	...	...	"	2,000
9. Business expenses	...	...	"	500
10. Dividend (already taxed).	...	...	"	1,000

How to fill up the return under section 22(2)

FORM OF RETURN OF TOTAL INCOME FOR INDIVIDUALS, FIRMS, HINDU UNDIVIDED FAMILIES AND OTHER ASSOCIATIONS OF INDIVIDUALS UNDER SECTION 23(2) OF THE INDIAN INCOME-TAX ACT 1922.

Income-tax year 1931-32.

Name of assessee HARI CHARAN DAS (Karta of the Joint Family).

Designation Merchant

Address Harrison Road, Calcutta.

Statement of total income during the previous year

1	2	3
Sources of income.	Amount of profits or gains or income during the previous year.	Tax already charged on the income.
	Rs. A.	Rs. As.
1. Salaries (including wages, annuity pension, gratuity, fees, commission, allowances, perquisites, including rent-free quarters) or profits received in lieu of, or in addition to, salary or wages ... [See note (1)]		
1A. The contributions made by an employer to the account in a recognised provident fund of the person making the return ...		
1B. The interest accruing to the account mentioned in 1A which is not exempt from income-tax [Section 58F (2)]		
2. Interest on securities (including debentures) already taxed ... " (2)		
3. Interest on securities of the Government of India or of local Governments declared to be income-tax free ... " (3)		

1	2	3
Sources of income.	Amount of profits or gains or income during the previous year.	Tax already charged on the income.
	As. A.	Rs. A.
4. Property as shown in detail in Schedule A „ (4)	1,250	
5. Business, trade, commerce, manufacture, or dealings in property, shares or securities (details as in note 5) ... „ (5)	7,500	
6. Profession ... „ (6)		
7. Dividends from companies ... „ (7)	1,000	
8. Interest on mortgages, loans, fixed deposits, current accounts, etc., not being income from business ... „ (8)	500	
9. Ground rent ... „ (9)		
10. Any source other than those mentioned above including any income earned in partnership with others ... [See note (8)]		
TOTAL ...	10,250	
Deductions claimed— (a) on account of insurance premia ... (b) on account of contributions to a provident fund to which the Provident Funds Act applies ... (c) on account of contributions to a recognised provident fund [Section 58A (a)] ... (d) others ...	450	

I declare that to the best of my knowledge and belief the information given in the above statement is correct and complete, that the amount of income shown are truly stated and relate to the year ended Chaitra 1337 B. S. and that no other income accrued or arose or was received by family during the said year and that the family had during the said year no other sources of income.

Date 22-5-31

Signature HARI CHARAN DAS

N. B.—(a) Income accruing to you outside British India received in British India, should be entered in Part I and not in Part II.

(b) All income from whatever source derived must be entered in the form including income received by you as a partner of a firm.

NOTE 1.—In column 2 should be shown the gross amount of salary and not the net amount after deductions on account of income-tax, provident funds, etc.

NOTE 2.—“Interest on securities” means the interest on promissory notes or bonds issued by the Government of India or a local Government or the interest on debentures or other securities for money issued by or on behalf of a local authority or company. Where income-tax has been deducted from the interest, or where the interest has been paid income-tax free, the amount of tax so deducted or paid should be added to the amount of interest actually received, and the gross amount so arrived at should be entered in column 2 of the statement. The term “interest on securities” does not include interest on fixed deposits or mortgages or other loans, which have to be shown under heading 1.

The interest on securities of the Government of India or of local Governments declared to be income-tax free should be shown under head 3. Those which are not declared to be income-tax free should be included under this head.

Entries under this head must be supported by the certificate issued by the person or company paying the interest under section 18(9) of the Act.

NOTE 3.—(a) The income-tax payable on the interest receivable on a security of a local Government issued income-tax free is payable by the local Government and not by the holder of the security.

(b) Only the interest on securities of the Government of India or of a local Government declared to be income-tax free should be entered against this head. Such interest will not be charged to income-tax but it must be included in the statement of total income in order to ascertain the rate of income-tax chargeable on other income. *It is chargeable to super-tax.*

(c) Particulars of any interest on securities issued by other authorities and stated to be free of income-tax should be entered against head 2, as income-tax on such interest is actually paid by these authorities on behalf of the recipients.

NOTE 4.—The tax is payable under this head in respect of the *bona fide* annual value of any buildings or lands appurtenant thereto, of which you are the owner, other than such portions of such buildings and lands as you may occupy for the purpose of your business.

NOTE 5.—(a) Where you keep your accounts on the mercantile accountancy or book profits system, you must file a return in the following form :—

Income, profits or gains from business, trade, commerce.

	Rs.	As.
Income, profits or gains as per Profit and Loss Account for the year ended Chaitra 1337 B. S. 1931.	10,250	
<i>Add</i> —Any amount debited in the accounts in respect of—		
1. Reserve for bad debts ...		
2. Sums carried to reserve for provident or other funds ...		
3. Expenditure of the nature of charity or presents...		
4. Expenditure of the nature of capital ...		
5. Income-tax or Super-tax ...		
6. Drawings or salary of proprietor or partners, ...		
7. Rental value of property owned and occupied ...		
8. Cost of additions to, or alterations, extensions, improvements of, any of the assets of the business ...		
9. Interest on the proprietor's or partner's capital, including interest on reserve or other funds ...		
10. Losses sustained in former years ...		
11. Losses recoverable under an insurance or contract of indemnity ...		
12. Depreciation of any of the assets of the business ...		
13. Private or personal expenses and expenses not incurred solely for the purpose of earning the profits ...		
TOTAL ...	10,250	
<i>Deduct</i> —Any profits included in the account already charged to Indian Income-tax and the interest on securities of the Government of India or of local Governments declared to be Income-tax free. ...		
BALANCE ...		

(Signature of the person making the return.) Hari Charan Das.Dated 22-5-1931

(b) Where you do not keep your accounts in such a form, you must file a statement showing how you arrive at the taxable profits, i.e., showing details of the gross receipts and of the expenditure you propose to set against those receipts. No deductions are permissible on account of—

- (i) Property owned and occupied by the owner of a business for the purposes of a business ;
- (ii) Additions to, or alterations, extensions, or improvements of, any of the assets of the business ;
- (iii) Interest on the capital of the proprietors or partners of the business ;
- (iv) Bad debts not actually written off in the accounts ;
- (v) Losses sustained in previous years ;
- (vi) Reserves of any kind ;

- (vii) Sums paid on account of the income-tax or super-tax or any tax levied by a local authority other than local rates or municipal taxes in respect of the portion of the premises used for the purpose of the business ;
- (viii) Any expenditure of the nature of charity or a present ;
- (ix) Any expenditure of the nature of capital ;
- (x) Any loss recoverable under an insurance or a contract of indemnity ;
- (xi) Depreciation of any kind other than that specified in the Act ;
- (xii) Drawings or salaries of the proprietors or the partners ;
- (xiii) Private or personal expenses of the assessee ;
- (xiv) Any expenditure of any kind which is not incurred solely for the purpose of earning the profits.

If you have included any such sums in your expenditure in your books, you must exclude them from the expenditure permissible for the purpose of arriving at your taxable profits.

(c) You are also required to attach a statement showing the sums charged in your accounts under the provisions of section 58K (2).

NOTE 6.—The income, profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred *solely* for the purpose of such profession or vocation, provided that no allowance is made on account of any of your personal expenses. Professional fees received by you in any part of India (whether within British India or not) must be included by you in your receipts.

NOTE 7.—Income-tax chargeable on the profits of companies is paid by the companies, so that the dividends received by shareholders represent the net amount remaining after any income-tax due by the company has been paid. This amount should be entered in column 2 of the statement. The proportionate tax will be added in the Income-tax office.

If the rate of tax applicable to your total income is less than the rate of income-tax applicable to the profits or gains of the company at the time of the declaration of such dividends, you may, by attaching the company's certificates received with the dividends, have the excess collected on your dividends from the company set against the tax payable by you on your other income instead of having to apply separately for a refund.

NOTE 8.—Agricultural income from land not paying land revenue or local rates to an authority in British India should be included under this head or under income from business according to circumstances.

NOTE 9.—Deductions from total income can only be made for insurance premia in respect of insurance on your own life or on the life of your wife, or in respect of a contract for a deferred annuity on your own life or on the life of your wife. No deduction is permissible in the case of any other form of insurance except in the case of Hindu undivided families where deductions are permissible on account of premia paid in respect of insurance on the life of any male member of the family or of his wife. The original receipt or the certificate of the insurance company to which the premium was paid must be attached to the return.

Serial Number	1	2	3	4	5	6
	Name of village or town where the property is situated. Calcutta.	Name of street and number of property. College Street	In the case of municipalities the name of the person in whose name the property stands in the municipal registers.	Whether the property is occupied by owner or is let. Let out	Annual letting value of the property. 1,500/-	

DEDUCTIONS.							Net amount to be carried over to the front of the form.			
Period during which the property remained vacant.	Amount of rent actually received for the property, if let.	One-sixth of the annual letting value shown in column 6	Premiums paid to insure the property against damage or destruction.	Interest paid on a mortgage or charge on the property.	Ground rent paid for the property.	Land revenue paid for the property.	Collection charges paid.	Amount claimed on account of property remaining vacant.	Total of columns 8 to 13B.	
6A	7	8	9	10	11	12	13	13A	14	15

The personal income of the assessee is not taxable with the income of the Hindu undivided family and hence left out of consideration altogether. Sums paid by the members as premiums for insurance policies are permissible deduction. The valuation of the house property will be Rs. 15,000 less $\frac{1}{4}$ th, i.e., Rs. 250 = Rs. 1,250. Taxable income is Rs. 10,200 less tax already paid on dividend on Rs. 1,000/- at the rate of 19 pies. The taxable income therefore comes to Rs. 9250 at the rate of 19 pies per rupee, less the difference between 19 and 9 pies on Rs. 1,000 (already taxed).

COMPANY.

The Income-tax Act places a statutory obligation on each company to furnish the income-tax office with a return on or before the 15th June which may also be extended on application. The question of service of notice is immaterial but as a matter of courtesy, the Income-tax Officer in almost all cases issues notice to the company. Whatsoever penalties or disabilities a company may have incurred by not complying with the provisions of the Companies Act, the matter does not affect its liability to pay income-tax on its profits: *In re : Sri-gopalji Co.*, A. I. R. 1931 Lah, 376.

The procedure to be followed is the same as in the case of an individual assessment with minor alterations. Failure to file the return makes the company liable to a summary assessment under section 23(4) and it loses the right of appeal but of course it can file an objection under section 27 and in case of refusal may prefer an appeal against the order of refusal.

But where compliance is made, the Income-tax Officer may accept the return and make an assessment under section 23(1). Where the Income-tax Officer considers the return to be incorrect and incomplete, he usually serves a notice under sections 23(2) and 22(4) calling for evidence and accounts. Failure to comply with the requisition brings the company under the summary clause. Where full compliance is made, the assessment must be under section 23(3). An appeal lies against such an order to be filed ordinarily within 30 days before the Assistant Commissioner. No second appeal lies but the company within 60 days from receipt of the notice of the order may ask the Commissioner to state a case before the High Court. The Company as well can file a petition of review under section 33 within a year before the Commissioner.

The assessee company may be penalised under section 28 for any concealment of any particular of its income. An appeal lies before the Assistant Commissioner and in case of enhancement on appeal, a second appeal lies before the Commissioner for any concealment of any particular of its income. An appeal

lies before the assistant Commissioner and in case of enhancement on appeal, a second appeal lies before the Commissioner. The High Court has no power to compel the Commissioner under section 66(3) to state a case for reference where penalty has been imposed.

Section 23A gives wide power to the I. T. O. who with the previous approval of the Assistant Commissioner can treat a one-man company as a family company not controlled by more than 5 members and can ignore it altogether and proceed to make assessment on each individual member forthwith in respect to his shares.

An appeal against an assessment under section 23A can be lodged before the Commissioner within 30 days for decision by a Board of Referees. Similarly the Commissioner may be asked to state the case for reference to the High Court.

So far the Company is concerned it is taxable at the maximum rate no matter whether the income is below Rs. 2,000.

At least in the case of assessment of company, the I. T. O. can always make an assessment under section 23(1) as in all cases audited balance sheets are forthcoming.

The principal officer of a company is to furnish the I.T.O. with the names and addresses of share-holders to whom dividend has been paid together with a certificate that income-tax thereof has been deducted. It is further enjoined on him to furnish the Income-tax Officer with the names of employees having drawn assessable salaries and the amounts of tax, if any, deducted at source. It is mandatory on the principal officer u/s 20A to report to the I. T. O. the name and address of any person receiving interest exceeding Rs. 1,000.

The form of return to be filed by a company is shown herewith, with instruction how to fill it up.

Rule 18 lays down the prescribed form which is given below. It must be accompanied with a balance sheet.

Income, profits or gains from business, trade and commerce.

	Rs.	A.	P.
Income, profits or gains as per profit and loss account for the year ended 19 ...			
<i>Add</i> —any amount debited in the accounts in respect of—			
1. Reserve for bad debts ...			
2. Sums carried to reserve for provident or other funds ...			
3. Expenditure of the nature of charity or presents ...			
4. Expenditure of the nature of capital ...			
5. Income-tax or Super-tax ...			
6. Rental value of property owned and occupied ...			
7. Cost of additions to, or alterations, extensions, improvements of, any of the assets of the business ...			
8. Interest on reserve or other funds ...			
9. Losses sustained in former years ..			
10. Losses recoverable under an insurance or contract of indemnity ...			
11. Depreciation of any of the assets of the business ...			
12. Expenses not incurred solely for the purpose of earning the profits ...			
Total ...			
<i>Deduct</i> —Any profits included in the accounts already charged to Indian income-tax and the interest on securities of the Government of India or of local Governments declared to be income-tax free ...			
Balance ...			

If the company owns any property not occupied for the purposes of the business a statement in the form prescribed in schedule A to rule 19 should be attached with particulars of the credit and debit on account of such property entered in the accounts.

Declaration.

I, the [Secretary, etc.
see section 2(12) of the Act] of the information
 against each head in this return is correctly given as shown
 in the books of the Company as also in the accounts which
 have been duly audited by the auditors of the Company and

which have been adopted by the share-holders of the Company.

Signature.....

Designation.....

Dated 19 .

FIRM.

A firm may be constituted by a deed of partnership, registered or unregistered. A. B. C., three partners start a business with equal shares. There may not be any partnership deed; the account books reveal allocation of profits and apportionment thereof according to their shares. Similarly a firm may have registered partnership deed. The Income-tax Act recognises two kinds of firms, namely (1) Unregistered Firm and (2) Registered Firm. Section 26A provides the machinery for registration under the Income-tax Act. Under the Indian Contract Act a minor cannot be a partner in a firm and necessarily minors cannot be recognised as partners for the purpose of registration of a firm under section 26A. But minors are now admitted into the benefits of partnership and necessarily a firm having minor partners can be registered.

Under section 2(14) a firm may apply for registration before the Income-tax Officer with a registered deed of partnership in original or in duplicate where the original is not available showing specific shares of each partner at any time before assessment under section 23. Registration is also permissible before any assessment is made under section 34 under certain circumstances. Law as it stands, it is not at all necessary to apply for registration at the time of filing the return, although that is very convenient for the assessee. An Assistant Commissioner hearing appeal has power to allow registration as well. Registration is renewable every year. There cannot be such thing as once a registered firm is always a registered firm.

So far as submission of return and subsequent procedure are concerned, it is practically the same as in the case of individual.

INADMISSIBLE ALLOWANCES.

Drawings of partners, be they salaries or not or otherwise, are inadmissible deductions. Interest paid to a partner as capital investment cannot be deducted except when such an advance has been made at an agreed rate of interest and as a distinct loan.

DISADVANTAGES.

The firm as a whole is taxed as a single entity irrespective of the share of the partners and the partnership profit of each member is added to the partner's individual share for arriving at the total income and for determining the rate of tax payable by the individual partner.

ADVANTAGES.

Partners of the unregistered firm paying super-tax on the total income of the firm are not liable for super-tax again for their individual profits.

Where the Income-tax Officer does not consider a firm as a genuine and *bona fide* firm for the benefit of all the members, but a one-man firm for avoiding tax, he may proceed under section 23A and determine the share of profits of each individual members in the firm and assess each partner separately.

SUCCESSION & CHANGE IN THE CONSTITUTION OF THE FIRM.

A firm may be succeeded by another firm or there may be a change in the constitution of the firm. But whatever it may be, section 26 of the Income-tax Act enjoins that the successor is liable for the tax of his predecessors and assessment is to be made according to the status of the successors. But a successor is liable only when he succeeds a business, profession or vocation and nothing more.

Section 44 speaks of liability of all partners jointly and severally in case of the discontinuance.

REGISTERED FIRM.

A registered firm must pay income-tax at the maximum rate whatever be its income. The Finance Act of 1931 has raised the tax to be 26 pies per rupee. It must be remembered that a firm once registered cannot be considered always registered. Application for renewal for registration of the firm must be made annually.

ADVANTAGES.

A member of a registered firm can apply for refund where he can show that the rate of tax applicable to him is higher than his total income, as a result of which he is entitled to a refund under section 48 of the difference of the two rates. Similarly a partner is entitled to claim set-off of any loss in the firm against any of his personal profit.

A registered firm is not liable to pay super-tax although the shares of each individual members will be included in his

individual income for the purpose of computing super-tax where it exceeds Rs. 30,000.

In case of assessment under section 23(4), the Income-tax Officer may in his discretion cancel the registration after giving 14 days' clear notice.

Where there has been an improper and unfair distribution of profits totally disregarding the instrument of partnership the Income-tax Officer may in his discretion impose penalty under section 28.

COMPARISON OF THE TWO.

A registered firm is like an individual chargeable to income-tax whenever its income exceeds Rs. 2,000 and is liable to super-tax when the income exceeds Rs. 30,000.

The individual partner cannot claim any refund proportionate to his share, on the other hand, his partnership profit is added up with his individual income for determining the rate of tax.

The trend of modern decision is that a partner of an unregistered firm can claim set-off for loss against his individual income. Partner of a registered firm can claim set-off and refund under section 48

ILLUSTRATION.

A. B. C. X. Y. Z., constitute a registered firm having equal shares. In the year under assessment the registered firm incurs a loss of Rs. 400 and is assessed at nil.

The proportionate share of all members thus comes to a loss of Rs 400 each. X has no income from any other source, Y has an income of Rs. 2,300, Z has an income of Rs. 4,000, A has an income of Rs. 3,000, B has an income of Rs. 2,000 and C also Rs. 2,000. Under the circumstances A can be assessed individually. B and C are not liable to tax individually as the loss sustained in the registered firm must be set off against the profit. Similarly X and Y are not chargeable to income-tax in their individual capacities, while Z is liable to an assessment on an income of Rs. 3,600 at the rate of six pies.

Similarly where the above firm sustained a loss to the extent of Rs. 38,000 and the proportionate share of each partner is Rs. 6,333, X makes a profit of Rs. 6,000, Y Rs. 5,000, Z Rs. 5,500 while A, B and C make profits of Rs. 4,000, 4,200, and 4,500 respectively in their individual capacities. None of them are liable individually as they can claim set-off and are entitled to it under section 24.

LIMITATION.

No claim for any refund shall be allowed under section 48 unless the application is made within one year from the last day of the year in which tax was recovered or before the last day of the financial year.

The application for refund can be had from the Income-tax Office free of charge. It is not necessary to affix any court-fee stamp on the application. The applicant may request the Income-tax Officer to remit the amount by money order. But as a matter of practice the Income-tax Office usually issues a refund cheque which is valid for a month from the date of issue. Cases may arise where a refund cheque is not encashed within the prescribed time and consequently the cheque in question cannot be encashed. In such cases the applicant may again apply to Income-tax Officer for extending the date. A lapsed cheque is not necessarily a forfeited cheque.

ASSOCIATION OF INDIVIDUALS.

The Association as a whole or the members thereof are considered a single entity for the purpose of assessment. The rules and procedures applicable to individuals apply equally to the association of individuals. Unless notice under section 22(2) is served, the association is not bound to submit the return. Where the business is split up, the assessee can apply under section 26 for separate assessment.

RATE OF INCOME-TAX.

Unless the Finance Act is passed, Income-tax Officers are not competent to issue notice under section 22 and service of such notice before the passing of the Finance Act is a material irregularity invalidating the proceeding altogether.

The Indian Income-tax Act is a machinery one and the rate of tax is determined by the Finance Act both for the purposes of income-tax and super-tax.

RATE OF INCOME-TAX UNDER SECTION 34.

Where an assessment is made in the year 1930-1931 for the year ending 1930, the rate of income-tax will be that which is in force for the year 1930-31. But where notice under section 34 is issued for assessing the income of 1930 which has escaped assessment in the year 1931-32, the rate of income-tax shall be that in force in 1930-31 and not in 1931-32.

CHAPTER VIII.

Interest from all Sources.

A CRITICAL SURVEY ON ALL ITS PHASES IN RELATION TO ACCOUNTS.

With a view to give a practical idea as to how and when interest becomes chargeable to income-tax, it is necessary to see how first of all accounts are maintained inasmuch as taxability or otherwise depends on the method of keeping account.

SYSTEM OF ACCOUNTANCY.

There are two approved methods of accountancy, *viz.*, the cash system and the mercantile system of accountancy. There is firstly the cash basis system, when a record is kept of actual receipts and actual payments, entries being made when money is actually collected or disbursed. There is secondly, the mercantile accounting system under which a profit or loss account is maintained and a comparison is made of the value of the stock in hand on the beginning and at the end of each year. Under this latter system entries are made in the accounts on the date not of receipt of money or expenditure of money, but on the date of transactions irrespective of the date of payment. When goods are sold, for example, an entry is made at once on the receipt side of the accounts, although no cash may be received at the time in payment of such goods; and an entry is similarly made on the debit side when a liability is incurred although payment on account of such liability may not be made at the time. It will be the method of accounting adopted for by the tax-payer, therefore, that will determine the period within which any item of gross revenue or any deduction therefrom is to be accounted for, and whether particular allowances are or are not permissible.

It is for this reason that it does not contain a complete statement of the deductions or allowances that are permissible or not permissible in working out business profits or professional earnings, since certain allowances or deductions can only occur when the mercantile system of accountancy is adopted. There can, for example, be no allowance for '*bad debts*' when the cash basis is the method of accountancy employed. Under the mercantile accountancy system, as noted above, an entry is made on the receipt side when a sale is concluded, although the

money on account of such a sale has not been paid and in making up the accounts at the end of the year such entries are treated as receipts, and the tax is levied on these 'book profits'. It may happen that some of these 'book profits' cannot be recovered; they are written off as 'bad debts' when found to be irrecoverable; and since such 'book profits' have been included in the income assessed to income-tax, the 'bad debts' must be written off against the 'book profits' in the year in which they are written off in the accounts as irrecoverable. When the cash system is adopted, there can be no 'bad debts'.

Again, it will be the method of accounting that will determine the particular year in which allowances common to both systems of keeping accounts may be made. In sub-section (2) of section 10 of the Act, provision is made for allowances on account of rent paid, interest paid on capital borrowed, the amount of premium paid in respect of certain classes of insurance, amounts paid on account of current repairs, etc., and sub-section (3) of section 10 states that the word 'paid' means 'actually paid' or 'incurred' according to the method of accounting upon the basis of which profits or gains are computed, *i.e.* when the cash basis is adopted, it will be the date of actual payments that will determine the year in which such allowances are to be made, whereas if the mercantile accountancy system is adopted, the allowances can be claimed in the year in which the liability to pay accrued.

MONEY-LENDING BUSINESS.

Interest received from money-lending business is chargeable to income-tax. When it is a case of clear receipt it is always chargeable but it may be chargeable when it actually accrues or arises.

Under the cash system of accountancy interest becomes chargeable to income-tax when it is actually realised. But under the mercantile system of accountancy, profits or gains are chargeable to income-tax when it only accrues or arises.

WHEN INCOME ARISES.

In the Privy Council case of *St. Lucia Usines and Estates Co. v. St. Lucia*, (1924) A. C. 508 at 512, Lord Wrenbury has observed: "The words 'income arising or accruing' are not equivalent to the words 'debts arising or accruing'. To give them that meaning is to ignore the word 'income'. The word means 'money arising or accruing by way of income'. There must be a coming-in to satisfy the word 'income'.....If the tax-payer be the holder of stock of a foreign Government carrying, say, 5 per cent. interest, and the Government is that of a defaulting state which does not pay the interest, the tax-payer has neither received nor has there accrued to him any income in respect

of that stock. A debt has accrued to him but income has not. It does not follow that income is confined to that which the tax-payer actually receives. Where income tax is deducted at the source, the tax-payer never receives the sum deducted but it comes to him."

Similarly in *Grasham Life Assurance Society v. Bishop*, (1902) A. C. 287 at 296 Lord Lindley observes as follows : "My Lords, I agree with the court of appeal that a sum of money be received in more ways than one, e.g., by the transfer of a coin or a negotiable instrument or other documents which represent and produce coin, and is treated as such by businessmen. Even a settlement in accounts may be equivalent to receipt of a sum of money, although no money may pass; and I am not myself prepared to say that what amongst businessmen is equivalent to a receipt of a sum of money is not a receipt within the meaning of a statute which your Lordships have to interpret. But to constitute a receipt of anything, there must be a person to receive and a person from whom he receives, and something received by the former from the latter, and in this case that something must be a sum of money. *A mere entry in an account which does not represent such a transaction does not prove any receipt whatever else it may be worth.*"

EXECUTION OF HAND-NOTE OR FRESH SECURITY FOR DEBT.

Income may be received in kind as well as in cash and the receipt of an equivalent of cash may be a receipt of income. The essence is that there must be an actually realised or realisable profit. Receipt of a new and substituted security is not enough (Vide *Californian Copper Syndicate v. Harris* 5 T.C. 149, *Royal Insurance Co. Ltd., v. Stephen*, 14 T. C. 22 and also the unreported case of *Westminster Bank Ltd. v. Osler*)—In the matter of *Raja Raghunandan Prosad Sinhu v. Commissioner of Income-tax, Behar and Orissa*, A. I. R. 1933 P. C. 101.

COMPOUND INTEREST ADDED TO THE PRINCIPAL.

In the case of *Aurangabad Mills Ltd.*, 45 Bom. 1286, Justice Shah holds; "It is clear that the mere fact of the entries being made for the purpose of proper account keeping would not entitle the collector to treat the profits as having been received in British India within the meaning of section 3(1) of the Act VII of 1918." Again in *Commissioner of Income-tax v. Pydah Venkatachalapathy*, (3 I. T. C. 185), it was held that where compound interest is payable by a debtor to a creditor with yearly rests and the creditor makes entries in his books of accounts adding to the principal amount the interest which has accrued due at the end of the year, but does not receive payment either in cash or by counter-credit in the debtor's accounts, a mere entry of such interest in his books of accounts does

not make such interest taxable income within the purview of the Income-tax Act.

In the case of *Pandit Pandurang v. Commissioner of Income-tax*, A. I. R. 1926 Nag. 180 : 91 I. C. 980, it was urged that the amounts of Sawai credited in the Kasarkhata does not represent his income and that he makes credit entries in respect of Sawai in the Kasarkhata with the sole object that the debit and credit entries in his account books may tally and not with the object of showing his profits.

SAWAI.

Where a person advances 50 rupees to his debtor, he adds up Rs. 10 for Sawai to Rs. 50 and exacts a bond for Rs. 75 from the debtor payable by instalments and debits Rs. 75 to his debtor's khata and credits Rs. 25 to the Kasarkhata.

TAVANI LOANS.

Tavani means a period of rent, and the distinguishing feature of such loans is that at the close of each period, the interest due, if payment in cash has not been demanded by the creditor, is added on to the principal sum lent and becomes merged in it and begins to bear interest as part of such principal: *In re: T. P. Pethaperam-malchettiar*, A. I. R. 1929 Mad. 34.

Such unpaid interest added to the principal amount must for the purposes of assessments to income-tax be deemed to have accrued.

But in *Narayan Chetty, v. Subbia Chetty*, 43 Mad. 629, it was held that in such cases interest paid and added to the principal is to be treated as fresh deposit.

Similarly in the case *S. V. L. L. Lakshmanram Chettier*, A. I. R. 1929 Mad., 675, various cases were discussed and it was held that interest fallen due but not credited in the account year in respect of Tavani loans advanced in the course of money-lending business in British India to persons outside British India, is assessable under section 4(1) of the Act as income accruing, arising or received in British India.

MERCANTILE SYSTEM.

In *Subramayan Chettiar v. Commissioner of Income-tax*, Mad. A.I.R. 1927 Mad. 841, it was held that where a person who adopted the mercantile system of accountancy, advanced a sum of money and credited interest on advance although nothing was actually received, it was income which properly accrued or arose within British India.

In this case reference was made to *Gresham Life Assurance Society v. Bishop*, 4 T.C. 464, *Farmen v. Scottish Widows Fund*

Life Assurance Society. 5 T. C. 502, and *Scottish Provident Institution v. Farman*, 6 T. C. 34. In all these cases it was held that actual receipt of interest or profits is essential and that a mere inclusion of the amounts in the accounts is not sufficient to make income taxable.

INTEREST DUE.

When interest has fallen due to an assessee but has not been paid to him and he shows the amount due in his interest ledger and on the credit side for himself, according to mercantile system of accountancy, is the amount so shown income, profits or gains under section 13 of the Act? "The answer is based on a misreading of section 13 of the Act; perhaps a greater misunderstanding of the judgment of the High Court of Madras in the *Commissioner of Income-tax, Madras v. Subramaniay Chettiyar* (2 I. T. C. 365). That judgment was cited in this court as supporting the proposition that section 13 of the Act means what it says, which hardly needs support. In that case certain sums of interest which had not been paid in cash were shown in the assessee's books as received, by book transfer or otherwise, in accordance with the method of accounting regularly followed in these books; the learned judges naturally held that any sum shown as income or profits in the books, must under section 13 of the Act, be regarded as income or profits whether it had been received in cash, or what is called 'constructively received.'

But in the present case the sums of interest are not shown as income or profits received in any way, whether in cash or by adjustment of accounts; they are shown as still due, that is to say, not yet received and perhaps never to be received. The most that can be said of them is that they are shown in the accounts as assets, and that not of the amounts stated, but so much of them as may be recovered hereafter.

Section 13 merely lays down that sums shown in the accounts as received, whether actually or constructively (and there is little real difference) must be treated as income. It would be to stultify the Legislature to suggest that it lays down that sums shown as not received at all must be treated as income. Our answer to the particular question in this case is that sums shown in the accounts as having fallen due but not received cannot be treated as income." *In re: Nanhelal and Ghasiram v. Commissioner of Income-tax*, A. I. R. 1928 Nag. 241.

USUFRUCTUARY MORTGAGE IN TRUST IF AGRICULTURAL.

If a person carries on money-lending business and lends money on the security of lands of which he takes a usufructuary mortgage and if he immediately leases those lands back

to the mortgagor with a stipulation for fixed annual payments amounting to a definite percentage on the sum lent, should these annual payments be considered agricultural income?

"It may be conceded that the profits made by a usufructuary mortgagee even though arising out of the land mortgaged to him, are gains of his business, if he has taken this mortgage in the course of his business, as investment. But this concession does not necessarily involve an admission that such gains of business are not meant within the meaning of the section so as to exempt him from liability to pay income-tax. The money which actually comes into the hands of a pure usufructuary mortgagee may be rent received direct from tenants or may be the profits from actual cultivation. It is therefore either rent derived from land which is used for agricultural purposes or is income derived from land by agriculture. *In either case it is agricultural income.* It may also happen to be gains of his business, but that does not necessarily take him out of the exemption clause. I am therefore clearly of opinion that in the case of a pure usufructuary mortgage there is no liability to pay income-tax. The position of such a mortgagee is very much analogous to that of a proprietor who is entitled to have his name recorded in the revenue papers and is for the purposes of revenue courts treated as a co-sharer. He is also entitled to sue for arrears of rent, eject tenants and to enter into possession and cultivate the land himself as the proprietor himself could have done. He is further liable to pay Government Revenue which a simple mortgagee is not. His position is analogous to that of a lessee who takes a lease of agricultural lands, say for a fixed period, on payment of some *naxarnama*. The latter case of transfers cannot make one liable for payment of income-tax. It is thus clear that the income received by a usufructuary mortgagee is really agricultural income, though it just happens to be also a return for the capital invested by him. To hold that he is liable to pay both Government revenue and income-tax would be imposing a double taxation which is against the policy of the Act." *In re : Mulukchand Sarup v. Commissioner of Income-tax, U. P.*, 107 I. C. 683. (The case of *Subramaniya Sastrigal v. Commissioner of Income-tax, Madras*, 2 I. T. C. 152 Dist.)

Similarly in the case of *T. K. F. Ibrahimsa Ravanthar v. Commissioner of Income-tax, Madras* A. I. R. 1928 Mad. 543 : 51 Md. 455, it was held that the assessee whose chief source of income was money-lending business lent money on usufructuary mortgages of agricultural land with no stipulation for interest, the income from the mortgaged properties to be taken and enjoyed by him. The Income-tax Officer, purporting to look into the substance of these transactions, held that the income-tax

derived therefrom was really part of the profits and gains of the money-lending business carried on by the assessee and not agricultural income exempted from assessment. *Held* (Justice Jackson *dissenting*) that the income sought to be assessed was rent derived from land used for agricultural purposes and hence exempt from assessment. Section 4(3) (vii) of the Income-tax Act. *Subramanya Sastrigal v. Commissioner of Income-tax, Madras*, 2 I. T. C. 152 overruled.

POSSESSING MORTGAGE.

In the unreported case of *Khan Mahammad Yakub Khan and Khan Mahammad Ashan v. Commissioner of Income-tax, Punjab and N. W. Frontier Province*, it was held that the mortgagee being entitled only to a fixed sum and having no concern in the produce of the land or the possession thereof, the sums received could not be said to be income from land within the meaning of section 2(1) of the Income-tax Act and that the sum of Rs. 30,000 was received by the mortgagee only when the same was deducted from the purchase money and not earlier when it was secured as a charge.

REMITTANCES FROM ABROAD—INCOME OR NOT.

The unreported case of *A. M. K. Mulha Karupuru Chettiar and another v. The Commissioner of Income-tax, Madras*, contained in short the following facts : The assessee carrying on money-lending business remitted in the account year huge sums at their branch shop. These remittances were exhibited in the accounts as loans, interest charged and adjusted in the accounts. It was observed that "on the merits, I consider that the amount of 2 lakhs was rightly taxed. Section 4(2) of the Income-tax Act enacts 'profits and gains of a business accruing or arising without British India to a person resident in British India, shall, if they are received or brought.....' The petitioners admit that large profits accrued or arose to them in their business at Penang and that the remittances made to British India came out of the funds of their Penang business which consists of both capital and profits. The Madras High Court has repeatedly held that in such circumstances there is *prima facie* presumption that the remittances represent profits unless the assessee prove the contrary. In this case the petitioners have not proved that the remittance or any portion thereof was attributable to capital."

AUCTION SALE.

It is an established rule of law that when an assessee obtains from realisation or conversion of securities enhanced values, it becomes chargeable, inasmuch as it is an act done in what is truly the carrying on or the carrying out of a business : *In re : National Provincial Bank of England*, 5 T. C.

SECURITY SALE.

In the *Scottish Investment Trust Company v. Forbes*, 3 T. C. 231, it was held that when larger prices are realised on sales of securities, the difference cannot be treated as profits if the sale was for the purpose of realisation. But when the assessee deals in securities the difference in prices is profits chargeable to income-tax.

In *Forests*, 8 T. C. 704 : 8 T. C. 704, it was held that on purchase of shares dividend accrued but not declared, the amount in the dividend, which is declared subsequently, is income and not capital.

ASSETS REALISED IF INCOME OR CAPITAL.

In case of *Forbes*, 3 T. C. 542, it was observed by Lord Young that the general principle will be that when a businessman disposes of his business premises at a higher price and buys a new one, the excess is not income but capital.

In the *Californian Copper Syndicate v. Inland Revenue*, 5 T. C. 159, a company formed to buy copper-bearing land, purchased 'lands, made addition and alteration and then he sold it to a company for shares.' It was held that profits arising therefrom are chargeable to income-tax.

But in *Tebram Rubber Syndicate v. Farmer*, 5, T. C. 558, it was held that the first company was not formed to deal in land as a business. In the *Commissioner of Taxation v. Newman*, 29 Common Wealth L. R. 484, when a breeder of stocks sold away all his stocks together with the good-will as a going concern, it was a realisation sale and not chargeable to income-tax.

Similar views have been expressed in *Stevens v. Hudson's Bay Company, Limited*, 5 T. C. 424, that sale proceeds of these lands are not chargeable to income-tax.

Now to revert to the subject in question, let me first take the subject one by one :—

- (a) Interest on arrear of rent of land—such interest is not chargeable to income-tax as it is purely agricultural income ; but when the arrears are secured by bond, registered or unregistered and are therefore recoverable by civil suit, such income is chargeable.
- (b) Interest on bank deposit is chargeable to income-tax under head 'other sources'.
- (c) Interest on borrowed capital is deductible but the interest thus deducted shall be chargeable to income-tax in the hands of the recipient.

(d) Interest on post office savings bank deposit—such interest is not taxable, similarly the yield of post office cash certificates are not chargeable. Under section 30 the Governor-General-in-Council has by notification No. 778F, dated 21-3-1922, made several exemptions.

(e) Interest on foreign debentures :—

When such interest is received by the debenture or security-holder in British India, it is clearly liable to Indian Income-tax under section 4(1); when, however, it is not received in British India, the tax will only be payable under the terms of the same section if the interest can be held to accrue or arise then.

(f) On Guaranteed securities :—

Where a sum has been paid as guaranteed interests for a period during which Government has given an undertaking, it is income: *In re: Pretoria Pietorsburg R. Co.*, 6 T. C. 508.

(g) On Government securities :—

The interest on Government securities purchased through the post office and held in the custody of the Accountant-General, Post and Telegraph, is not taxable as per notification No. 60 dated 5-1-1925 under section 60. Similarly under section 8, the interest chargeable is the interest on securities of the Government of India or of a local Government or on debentures or other securities for money issued by or on behalf of a local authority or company.

When a local Government issues a security as income-tax free the income-tax on the interest thereon shall be payable by that local Government.

“Whatever it may be income-tax is not payable on the interest received by the assessee.”

USUFRUCTUARY MORTGAGEE.

When the assessee mortgagee is in the position of a landlord with respect to actual cultivating tenants, income from rent or revenue is agricultural income.

In the case of Zuripeshgi lease with a usufructuary mortgage, the position of the mortgagee may be the position of a landlord. In the case of *Commissioner of Income-tax v. Maharajadhiraj Sir Kameswar Singha of Darbhanga* A. I. R. 1934 Patna 178, 2 Income tax Law Reports 18, it has been held that

the assessee lessee is in possession of both the properties, and, in his relation to the cultivators of the soil, he is in the position of a landlord dealing directly with them and collecting rents. The estate is in every sense in the possession of a landlord of land used for agricultural purposes and the assessee is in the position of a landlord with respect to the actual cultivating tenants within the meaning of the term under the Bengal Tenancy Act.

MORTGAGE-DEBT.

Interest paid or payable is an allowable expenditure, similarly interest paid on borrowed capital is also an allowable expenditure, but interest paid to partner, under certain circumstances, is an allowable item.

REFUND WITH INTEREST.

An assessee is entitled to have the amount refunded if such refund is the result of a reference before the High Court and the Commissioner may allow interest on the amount.

MORTGAGE SALE.

In case of sale, so much of the interest due as has constituted the price has been received and others have become part of his income at the date of the execution of the sale-deed: *In the matter of Raghunandan Prosad Sinha*, 9 Pat. 48 and also in the case of *Mahumad Yakub Khan*, 30 P. L. R. 30 : 115 I. C. 85.

In the case of *Raghunandan Prosad*, 9 Pat. 48, it was held that when a mortgagee purchases the mortgaged property *in execution of a mortgage decree*, the *auction purchased property* represents the original loan plus the accumulated interest on the loan advanced and therefore so much of the property as represents the accumulated interest is chargeable to income-tax and the interest *becomes receivable only when the sale is confirmed*.

But a loan or debt may be repaid in various ways without actual payment in cash and difficulty arises as to the time when it is to be deemed to be received by the creditor. In the case of *Maharajadhiraj of Darbhanga*, A. I. R. 1930 Pat. 81, this question arose and the principle underlying assessments in such a case was discussed.

Where a person, say S, has incurred a loan of Rs. 50,000 from one M. S. managed to effect a settlement by transferring several decrees to M and by executing a handnote. This cannot by any straining of language be said to be a receipt so as to entitle the Income-tax authorities to claim tax on the whole of the interest due at the date of the sale. When an assessee auction purchases a mortgaged property, profits must

be deemed to have arisen on the confirmation of sales. The decree is only a step towards realisation and the date of decree is therefore plainly not the date of realisation. Nor on the date of sale, does the purchaser obtain an indefeasible right, for under Order 21, Rules 89, 90 and 91, the sale may be set aside on various grounds. It is only when no application is made under these Rules or when such application is made and disallowed that the Court under Order 21, Rule 92 of the Civil Procedure Code makes an order confirming the sale, whereupon the sale shall become absolute. It is then that the process of realisation is completed.—*In the matter of Raghunandan Prosad Sinha* A. I. R. 1933 Privy Council 101.

ASSESSMENT OF LAWYERS AND ATTORNEYS.

Lawyers when called upon to file return, are to submit the same by the due date or extended date as the case may be. His system of accountancy must necessarily be cash and not mercantile. Besides professional fees, incomes from other sources if any, are to be included. They can claim the following allowances, *e. g.*—

- (1) Professional license fees inasmuch as these are condition precedent of their permission to practice.
- (2) Expenditure on motor car is held to be inadmissible because the car is not required for profession but for prestige and personal comforts of the assessee and under the terms of sub-section (2) of section 11 of the Income-tax Act, therefore, the allowance in question is clearly not claimable. (Unreported case of Mr. Langford James of the Calcutta High Court.)
- (3) Claim for office rent is an allowable item although in the unreported case of *H. S. Gour* Part VII, *Srinivasan P.* 355, it was disallowed as payment to self.
- (4) Pay of peon is an allowable deduction as reported in *H. S. Gour*.
- (5) Salaries paid to clerk are also admissible.

The above statement will give a rough idea as to what can be allowed to a lawyer in computing net income.

ASSESSMENT OF INSURANCE COMPANIES.

In the *Mangalore Roman Catholic Provident Fund v. the Commissioner of Income-tax, Madras*, 76 I. C. 833, the Asso-

ASSESSMENT OF INSURANCE COMPANY

ation applied for a reference to the High Court under section 66(2) of the Act. The following question of law arose ;—

What is the correct method of assessment in this case.

SHOULD THE FIRM BE ASSESSED ?

(a) According to Rule 25 of the Income-tax Rules on the average profits as disclosed by the last proceeding actuarial valuation, or

(b) Following the decision of the Madras High Court in the case of *Mylapore Hindu Permanent Fund* should the assessment be made direct on the interest earned from outside investments, other profits or losses arising from transaction with members being ignored.

C. J. Coutts Trotter held : I am of opinion that the second is the correct method of assessment in the case. If it were held that Rule 25 could be applied to the Mangalore Roman Catholic Provident Fund, there would be a conflict between the rule and the decision in the *Mylapur Fund* case, for the actuarial valuation undoubtedly does take into consideration profits earned from members. It seems to me, however, that Rule 25 cannot be applied in this case, firstly because this Fund is not a company within the definition given in section 2(6) of the Income-tax Act, as it has not been formed or registered under any statute, and secondly because the fund, even if it is a 'company' is not an 'incorporated company.'

CHAPTER XI.

Super-Tax.

Super-tax is practically an additional duty of income-tax. The application of the Act to super-tax is governed by section 58 of the Income-tax Act of 1922 which runs thus:—

“(1) All the provisions of this Act, except section 3, the proviso to sub-section (1) of section 7, the provisos to section 8, sub-section (2) of section 14, and sections 15, 17, 18, 19, 20, 21 and 48 shall apply, to tax as may be, to the charge, assessment collection and recovery of super-tax:”

Provided that sub-sections (4) to (9) of section 18 shall apply, so far as may be, to the assessment, collection and recovery of super-tax under sub-section (2) or sub-section (3) of section 57 and under section 68H.

(2) Same as provided in section 57 (and section 58H) super-tax shall be payable by the assessee direct. Super-tax is an additional tax. Section 55 is the charging section whereas section 56 is meant for computation. It is payable on the total income from all sources determined subject to any legitimate deductions according to legislative enactment and even the amount of income-tax or super-tax paid cannot be deducted: *In the matter of Kennerd Davis*, 8 T. C. 341.

The rate of super-tax is governed by the Finance Act each year, up to the assessment year 1930-31. Super-tax could not be levied up to the total amount of Rs. 50,000 but by the Finance Act of 1931, when the total income exceeds Rs. 30,000 super-tax is payable (of course with the exception of Hindu undivided family).

Super-tax is thus leviable on individual, unregistered firm, company and other association of individuals excepting the registered firm.

Company and registered firms are charged at the maximum rate (26 pies per rupee according to the Finance Act of 1931)

whereas assesseees of other status are to pay that at the rate applicable to their total income.

Where an unregistered firm is assessed to super-tax, partners thereof are not liable to super-tax to the extent of their individual income. But so far as registered firms are concerned, super-tax is to be determined after taking into account the share of profits received by a member of such firm or dividends if any received by the share-holder or the interest which accrues to a member from the purchase of income-tax-free war bonds or securities for the purpose of arising at the total income.

Section 57 is expressly meant for the realisation of super-tax from non-resident members of a registered firm.

In the case of *Fitzgerald*, I. T. C. 284 it was held that a retiring barrister is liable to super-tax for the year of his retirement on the income assessed on the previous year.

Exceptional privileges have been allowed to Hindu undivided family when members are jointly interested as a result of which larger deductions are allowed but this does not go so far as to entitle the holder of an impartible estate: *In the matter of Siba Prasad Sinha*, 82 I. C. 653.

As to bonus shares allotted by a company, the decision in the case of *Steel Bros & Co.* 82 I. C. 665, it was held that when a limited liability company capitalised the sum standing in its books as undivided profits and distributed to the holders of the ordinary shares in the form of fully paid bonus shares, the share holders having given no option to take the profits, in any other form the share-holders can have no income, profits or gains within the meaning of section 2, sub-section (15) and sections 10 and 12 of the Act of 1922.

C. O. Robinson observes: "I have given the matter my most careful consideration and in my opinion the *Swan Brewery*-case need not be taken to be a binding authority on us for the purpose of deciding the present references.....The question before us, therefore, has been decided twice by the House of Lords, and in each case it has been held that bonus, shares, such as were distributed in this case, are not income, profits or gains, and are not, therefore, liable to super-tax."

Section 57 lays down in details what sections or portion thereof are not applicable to super-tax case.

(a) Section 3.

(b) Section 7(1).

- (c) The proviso to section 8 with respect to securities issued income-tax free.
- (d) Section 14(2) exempts from income-tax the dividends received by share-holders of a company and the share of profits of a firm received by its members.
- (e) Section 15 relating to Life Insurance premium: contribution to provident funds and purchase of an annuity.
- (f) Section 17 relating to marginal relief is unknown to super-tax.
- (g) Under section 18 deduction of super-tax at source is unknown.
- (h) Section 19 relates to payment in other cases.
- (i) Section 26: certificate by company to share-holders receiving dividends.
- (j) Section 21 relates to annual return.
- (k) Section 48 relating to refunds for computation of total income of non-residents and denial of refund to non-British.

Thus it is clear that marginal relief is unknown to super-tax. The Governor-General in Council in exercise of the power conferred by section 60 of the Indian Income-tax Act, 1922 (XI of 1922), is pleased to direct as follows:—

DATED 4TH APRIL 1931.

When owing to the fact that the total income of an assessee has reached or exceeded a certain limit, he is liable to pay super-tax or to pay super-tax at a higher rate, the amount payable by him on account of income-tax and super-tax, shall when necessary, be produced so as to exceed the aggregate of the following amounts namely:—

- (a) the amount which would have been payable on account of income-tax and super-tax if his total income had been a sum less by one rupee than that limit and
- (b) the amount by which his total income exceeds that sum. But it is doubtful that without any amendment of section 57 or any other legislative enactment expressly allowing marginal relief in super-tax case, the Governor-General-in-Council under

section 60 cannot override the principle laid down in section 57.

Section 57 refers to 'in respect of income-tax' and not in respect of super-tax to the above notification means riding rough shod over section 57 which expressly lays down that section 17 is inapplicable to super-tax.

This is clearly against the spirit of the law and possibly it has been so framed as to give such reliefs to the assessee as the Finance Act of 1931 has lowered the amount up to Rs. 30,000 for super-tax purposes.

Deduction of super-tax at the source.—One of the exceptions to the general rule that super-tax is recovered by assessment of the person liable is that provided in sections 18(3A) to (3D) and 57. That provision is rendered necessary owing to the difficulty of obtaining income-tax and super-tax from non-residents. Section 57 (1) provides that in order to recover super-tax from the share of the profits of a partner in a registered firm, who is not resident in British India, the resident partners are themselves jointly and severally liable to pay the super-tax due from the nonresident in respect of his share. Section 18(3A) authorises an Income-tax Officer to require the person responsible for paying interest not being interest on securities to deduct income-tax and super-tax at the time of payment of such interest to a non-resident, if the amount any year exceeds the maximum amount which is not chargeable with super-tax, at the rates determined by him to be applicable to the total income of such person in that year. Under section 18 (3B) where the person responsible for paying any interest *not being interest on securities* to any person pays to that person in any year an amount of such interest exceeding in the aggregate the maximum amount which is not chargeable with super-tax the person responsible for paying such interest shall, if the recipient is not known to be a resident and no order under section 18 (3A) has been received from the Income-tax Officer in respect of such recipient, deduct at the time of payment income-tax on the total amount of such interest at the rate appropriate to such total and super-tax on the amount by which such total exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess.

Section 18(3C) authorises an Income-tax Officer to require the principal officer of a company to deduct super-tax at the rate determined by him from the dividends payable to a non-resident shareholder whose total income is expected to exceed the maximum amount which is not chargeable to super-tax. This rate must be the effective or average rate of super-tax ;

that is to say, first the total amount of super-tax due on the total income must be calculated. Then the rate is to be arrived at by dividing this total super-tax by the total income. That rate is to be notified to all persons paying dividends and they should be required to deduct super-tax at that rate from whatever dividends they pay. These sections should not ordinarily be resorted to where the non-resident has an authorised agent in India to whom these interest payments or dividends are paid and through whom he can be assessed to income-tax and super-tax in the ordinary way under section 43 of the Act, but this section should be employed where special circumstances render it necessary, *e.g.* where a non-resident has resorted to some device by which such proceedings under section 43 have been rendered infructuous. Any such case should be reported by the Income-tax Officer concerned through the Assistant Commissioner of Income-tax whose orders should be taken before proceeding under this section.

Section 18 (3D) makes a principal officer of a company liable to deduct any super-tax due on dividends payable to a shareholder whom he has no reason to believe to be resident in British India. The liability under this section and section 57 (2) merely attaches where the amount of the profits or dividends payable to the non-resident partner or shareholder together with the amount of any income-tax payable by the company or firm in respect thereof is taken by itself liable to super-tax on the assumption that it represents the whole income of the non-resident partner or shareholder. It should be observed that if for example dividends are paid half-yearly and the combined amount of the two payments in any year and the income-tax thereon exceeds the minimum liable to super-tax though the first payment including the income-tax on it taken by itself does not exceed it, the principal officer is bound to deduct the super-tax on such excess from the second payment. The Act does not require the resident partner or the principal officer to obtain from the non-resident partner or shareholder a statement of any other income that may accrue to him in British India. Where there is reason to believe that there is such other income it will be necessary to rely on the provisions of section 42 and 43 of the Act or section 18 (3C). In the case of companies the obligation to deduct applies only to dividends and does not apply to other sums which a non-resident may receive from the Company by way of interest on debentures or remuneration such as director's fees. If the non-resident is himself assessed through an agent, sub-section (2) of section 57 provides that amount deducted at the source in this manner shall be taken into account in determining the amount payable by him in respect of any other income.

Super-tax. Deduction at source from dividends of non-resident shareholders.—18 (3D). Sometimes large blocks of shares are registered in the names of banks, and held by them on behalf of the real owners for various reasons, though the banks have no proprietary or beneficial interest therein. The aggregate dividends on a block of shares in a single company thus held by a bank may exceed the maximum amount exempt from super-tax, though the dividends payable to some or all of the real owners individually may not exceed that amount. In such circumstances super-tax should not be deducted at source from the dividends payable to the bank irrespective of the liability of the several real owners of the shares. If, therefore, a bank in such circumstances furnishes the Income-tax Officer assessing the company from time to time with a list giving the names and addresses of the real owners of the shares and the number of shares held by each, the Income-tax Officer will inform the principal officer of the company, under section 18 (3C), of the rate of super-tax to be deducted in respect of the dividends payable to the bank, or that no super-tax is to be deducted therefrom, as the case may be, having regard to the liability of the individual shareholders.

Rules.—Rules made under section 59 of the Act by the Central Board of Revenue are contained in Part II of this Volume. With the exception of the rules first made under the Act, the power to make rules is, under section 59 (3), subject to the condition of "previous publication." The meaning of the phrase it is accorded proceed to assess accordingly. The Assistant Commissioner should give the firm, company or association of individuals as the case may be, a hearing before he directs the Income-tax Officer to refrain from determining the sum payable as income-tax by it and make the assessment on the members.

Section 23-A is not one of the sections mentioned in section 58. Consequently "Income-tax" in section 23-A (1) and (2) means "Income-tax and super-tax". It follows that the Income-tax Officer under these sub-sections must refrain from determining the amount of their income-tax or super-tax payable by the firm, association or company.

Assessment of temporary residents.—Before the passing of the Indian Income-tax (Second Amendment) Act, 1933, there was no provision in the Act for the issue of a notice under section 22(2) before the close of the financial year for the purposes of assessing the income of that year. The absence of such a provision enabled touring theatrical companies and other temporary residents as also persons about to change their more permanent residence to escape income-tax by leav-

ing the country before the close of the year. The new section 24-A is designed to bring such assesseees under assessment. Where it appears to an Income-tax Officer that a person may leave India during the current year or shortly after its expiry and may not return to India he may serve a notice upon him requiring him to furnish a return in the same form and verified in the same manner as a return under section 22(2), of his total income for each of the completed previous years from the period from the expiry of the last previous year for which he has been assessed and of his estimated total income for the period from the expiry of the last such completed previous year to the probable date of his departure. The minimum period within which such a return should be required to be made is seven days. The Income-tax Officer may in the exercise of his discretion allow any period exceeding this limit according to the circumstances of each case. Such a notice is a notice under section 22(2) and all the provisions relating to assessment apply thereafter. The assessment shall be made for each complete previous year included in the period of assessment at the rate at which such total income would have been charged had it been fully assessed. As regards the period from the expiry of the last of such previous years to the probable date of departure the Income-tax Officer should estimate the total income and assess it at the rate in force for the year during which the assessment is made.

It should be particularly noted that this section should not be used to assess an income which has escaped assessment or has been assessed at too low a rate in respect of which the Income-tax Officer cannot issue a notice under section 34.

Assessment of deceased persons. (Section 24-B.)—This section provides that an executor, administrator or other legal representative of a deceased person shall be treated as an assessee for the purposes of an assessment on the income of a deceased person. There was no provision in the Act for the assessment of the incomes for deceased persons before the passing of the Indian Income-tax (Second Amendment) Act 1933 with the result that such incomes escaped tax. The Act, as now amended has stopped that loophole. The liability of an executor, administrator or other legal representative in respect of tax due by the deceased, is, however, confined to the payment of tax to the extent to which the estate of the deceased is capable of meeting the charge. The charge of income-tax on the income of a deceased person does not rank in any way prior to other charges to which the estate may be liable.

The procedure to be followed in making such assessments is as follows. Where no notice has been served on a deceased person under section 22(2) or 34 as the case may be, a notice may be served on the executor, administrator or other legal representative and an assessment made as if such person were the assessee. Where notice has been served on a deceased person, but no return has been made or where the return made is in the Income-tax Officer's opinion incorrect or incomplete, the Income-tax Officer may assess the income and determine the tax payable. For the purposes of making such assessments, the Income-tax Officer may require the executor, administrator or legal representative of the deceased to produce documents or other evidence under sections 22 and 23. All the provisions of the Act relating to the assessment and collection of a tax apply to these cases.

Where an assessment is made in pursuance of sub-sections (2) and (3) of section 24-B, the assessment should be regarded as one made under section 23, since the legal representative of the deceased is for the purposes of the Act the assessee. All the consequences of an assessment under section 23 will therefore follow: *e.g.*, a notice of demand can be issued to the legal representative under section 29, and an appeal can be filed by him under section 30 or other relief sought by him in the circumstances and to the extent that similar relief could have been sought by the assessee had he been alive.

General power to grant refunds.—Cases do arise where tax has been paid by or on behalf of a person with which he was not properly chargeable or which was in excess of the amount with which he was properly chargeable, which nevertheless do not attract the operation of section 48. For instance an assessee deriving his income entirely from interest on securities may have paid insurance premia for which he can claim a rebate if a formal assessment is made on his income from such interest. But if no such assessment is made he cannot under the provisions of section 48 claim it as a refund. Section 48-A is designed to cover such cases. Where an assessee satisfies an Income-tax Officer that he has paid tax with which he was not properly chargeable for any reason, the latter should allow a refund of the amount so paid. Similarly the Assistant Commissioner and the Commissioner in exercise of their appellate powers can grant such refunds.

As regards the procedure for applying for refunds see paragraph 92.

As regards appeal against an order an Income-tax Officer refusing to grant a refund see paragraph 95-C.

Refund in special cases.—Prior to the passing of the Indian Income-tax (Second Amendment) Act, 1933, the Act did not provide for a refund where through death, incapacity, bankruptcy, liquidation or other cause a person could not receive it or claim it. It has now been enacted that under such circumstances an executor, administrator or other legal representative, or the trustee as the case may be, is entitled to receive such refund or to make such claim for the benefit of such person or his estate. This applies to all kinds of refunds whether under section 48, 48-A or 49.

As regards the procedure to be followed in applying for refunds, see paragraphs 92 and 93.

As regards the right of appeal against an order of an Income-tax Officer refusing to grant the refund see paragraph 95-C.

Set-off of refunds against tax due.—Where a refund is due to an assessee, the Income-tax Officer, Assistant Commissioner or Commissioner may set off the refund wholly or in part against any tax payable by the assessee. This is convenient both to the assessee and to the Income-tax department.

Notice calling on a company for a return of total income with the profit and loss account under section 22 of the Indian Income-tax Act, 1922, and for a return of names and addresses of shareholders under section 19A of the same Act.

INCOME-TAX OFFICER, _____

Dated _____ *193*

To _____

1. You are hereby reminded of the provisions of section 22(1) of the Indian Income-tax Act, 1922, under which you are hereby required to prepare a true and correct return of total income in the attached form, so far as it is applicable to your case, and to deliver it to me at my office, duly signed by you as the principal officer of the company, on or before the 15th of June 193 .

2. The return should be accompanied by a copy of the profit and loss account referred to therein.

3. For the purposes of obtaining an allowance for depreciation under section 10(2) (vi) of the Indian Income-tax Act, 1922, you are required to furnish particulars to the income-tax office in the attached form.

4. You are also reminded of the provisions of section 19A of the Indian Income-tax Act, 1922, which require you to submit on or before the 15th June, 19 a return in the prescribed form and duly verified of the names and addresses of the shareholders to whom payment has been made of a dividend or aggregate dividends exceeding Rs. 10,000 during the period 1st April, 19 to the 31st March, 19

Income-tax Officer.

Under section 20-A and Rules 42-A and 43-A any person responsible for paying any interest not being "interest on securities" is required to furnish on or before the 15th June every year to the Income-tax Officer in whose jurisdiction he resides, a return showing the names and addresses of all persons to whom during the previous year he has paid interest or aggregating interest exceeding Rs. 1,000 together with the amount paid to each such person.

CHAPTER X.

Previous Year.

Under section 2(11) the term 'previous year' has been defined. Income-tax is charged on an assessee on his income, profits or gains of the previous year. Ordinarily it denotes the year ending with 31st March next preceding the year in which an assessment is made. Whenever an assessee makes up his accounts for 12 months ending in any day other than the 31st of March, such period is his previous year. But once a previous year is adopted, it cannot be changed without the express approval and sanction of the Income-tax Officer.

Section 2(11) is meant to cover all sorts of years, and we have the following years:—1931-32 (*Assessment year*).

- (1) Financial year—1st April to 31st March.
- (2) Calendar year—January to December.
- (3) Bengali calendar year—Baisak to Chaitra.
- (4) Tripura year—1740.
- (5) Maghi—1292.
- (6) Sambat,—Chaitra to Chaitra.
- (7) Ramnavami—Chaitra to Chaitra, 1986-1987.
- (8) Akshoy—Tritia—Baisak to Chaitra.
- (9) Rathjatra—1986-1987 Aswin to Aswin.
- (10) Dashahara—Aswin to Aswin.
- (11) Dewali—Kartick to Aswin.
- (12) Mahajani—Kartick to Aswin.
- (13) Ramjan.
- (14) Fasli.
- (15) Salvahan, etc.

In fact any 12 months that a firm has pitched upon as its accounting year.

The scheme of the Act is generally to have a year from April to year ending March. But as there is no hard and fast rule of starting a business, firms adopt their year according to their custom or to local calendars.

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